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John A. Clarke, Executive Officer/Clerk
BY MARY GARCIA, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES BC 422358

MBIA INSURANCE CORPORATION, a New York corporation,

Plaintiff,

vs.

INDYMAC ABS, INC., a Delaware corporation; HOME EQUITY MORTGAGE LOAN ASSET-BACKED TRUST, SERIES 2006-H4, a Delaware statutory trust; HOME EQUITY MORTGAGE LOAN ASSET-BACKED TRUST, SERIES INDS 2007-1, a New York common law trust; HOME EQUITY MORTGAGE LOAN ASSET-BACKED TRUST, SERIES INDS 2007-2, a New York common law trust; CREDIT SUISSE SECURITIES (USA), L.L.C., a Delaware limited liability corporation; UBS SECURITIES, LLC, a Delaware corporation; JPMORGAN CHASE & CO., a Delaware corporation; MICHAEL PERRY, an individual; A. SCOTT KEYS, an individual; JILL JACOBSON, an individual; KEVIN CALLAN, an individual; and JOHN and JANE DOES 1-100,

Defendants.

CASE NO.

COMPLAINT FOR:

(1) VIOLATIONS OF THE CORPORATE SECURITIES LAW (CAL. CORP. CODE §§ 25401 & 25501);
(2) VIOLATIONS OF THE CORPORATE SECURITIES LAW (CAL. CORP. CODE § 25504);
(3) VIOLATIONS OF THE CORPORATE SECURITIES LAW (CAL. CORP. CODE § 25504.1);
(4) COMMON-LAW FRAUD;
(5) NEGLIGENT MISREPRESENTATION; and
(6) DECLARATORY RELIEF

DEMAND FOR JURY TRIAL

Plaintiff MBIA Insurance Corporation ("MBIA"), as and for its Complaint against Defendants IndyMac ABS, Inc. ("IndyMac ABS"); Home Equity Mortgage Loan Asset-Backed Trust, Series 2006-H4 ("2006-H4"), Home Equity Mortgage Loan Asset-Backed Trust, Series INDS 2007-1 ("INDS 2007-1"); Home Equity Mortgage Loan Asset-Backed Trust, Series INDS 2007-2 ("INDS 2007-2") (the 2006-H4, INDS 2007-1 and INDS 2007-2 Trusts are collectively referred to herein as the "Trusts" or the "Trust Defendants"); Credit Suisse Securities (USA), L.L.C. ("Credit Suisse"); UBS Securities, LLC ("UBS) JPMorgan Chase & Co., as successor to Bear Stearns & Co., Inc. ("JPMorgan Chase") (Credit Suisse, UBS and JPMorgan Chase are collectively referred to herein as the "Underwriter Defendants"); Michael Perry, A. Scott Keys, Jill Jacobson and Kevin Callan (Mr. Perry, Mr. Keys, Ms. Jacobson and Mr. Callan are collectively referred to herein as the "Individual Defendants"); and John and Jane Does 1-100, alleges, on information and belief as to all facts other than as to itself, as follows:

Nature of the Action

1. This action arises from IndyMac Bank, F.S.B.'s ("IndyMac Bank") and IndyMac ABS's (collectively "IndyMac") fraudulent misrepresentations and omissions of material facts related to the sale of certain residential mortgage-backed securities.[1]

2. MBIA is informed and believes that Angelo Mozilo and David Loeb, cofounders of the now-notorious Countrywide Financial Corporation ("Countrywide"), also cofounded IndyMac Bank in or about 1985. IndyMac Bank, which was originally known as Countrywide Mortgage Investment, was formed to purchase and collateralize loans from Countrywide that were too large to sell to the Federal Home Loan Mortgage Corporation ("Freddie Mac") and the Federal National Mortgage Association ("Fannie Mae"). In or about 1997, IndyMac Bank split off from Countrywide; although it was no

[1] IndyMac Bank was a federal savings bank registered and existing under the laws of the State of California. On July 11, 2008, the Office of Thrift Supervision ("OTS") of the United States Department of the Treasury placed IndyMac Bank under the receivership of the FDIC pursuant to OTS Order No. 2008-24.

longer a Countrywide entity, IndyMac Bank continued to maintain ties with Countrywide even after the split. For example, on information and belief, Mr. Loeb continued to be Chairman of the Board of IndyMac, and Mr. Mozilo's children worked at IndyMac Bank after its split from Countrywide.

3. From at least 2001 until at least 2007, IndyMac Bank originated or acquired pools of mortgage loans that were then sold (or otherwise conveyed) to trusts created by IndyMac. The trusts in turn securitized the underlying mortgage loans and issued residential mortgage-backed securities ("RMBS Notes" or "Notes") which were then sold to public investors ("Note Purchasers").

4. MBIA's claims in this action relate to the material misrepresentations and omissions in connection with three securitization transactions: 2006-H4, INDS 2007-1, and INDS 2007-2. As part of the securitizations, Plaintiff MBIA provided financial guaranty insurance in the form of guarantees of the trust obligations to make principal and interest payments on the RMBS Notes involved in these transactions.

5. In late 2006 and 2007, IndyMac consistently falsely represented to the investors who purchased the RMBS Notes that IndyMac had originated the mortgage loans in strict compliance with its own underwriting standards and guidelines.

6. In reality, however, IndyMac had abandoned any reasonable and prudent underwriting standards. In an effort to expand its market share during the mortgage lending boom, IndyMac systematically abandoned its own underwriting guidelines in pursuit of increased loan originations: it knowingly loaned millions of dollars to borrowers who could not afford to repay the loans, or who IndyMac personnel knew or should have known were including misstatements in their loan applications, often with the assistance and encouragement of IndyMac's employees and brokers, or who otherwise did not satisfy the basic risk criteria for prudent and responsible lending that IndyMac claimed to use.

7. IndyMac's failure to abide by its underwriting guidelines fundamentally changed the risk profile of the mortgage loans underlying the RMBS Notes from what was

represented by IndyMac. IndyMac's actual practices dramatically increased the risks of delinquency and default associated with the mortgage loans backing the Notes that investors were purchasing from IndyMac. IndyMac knew or should have known this, because it was issuing loans to borrowers that it knew or should have known could not repay them. Consequently, upon the first public reports of the nationwide mortgage crisis, the number of delinquencies and defaults on IndyMac's mortgage loans dramatically increased.

8. As a direct result of IndyMac's misconduct, thousands of the mortgage loans underlying the securitizations are in default and/or foreclosure, events that would not have occurred if IndyMac had followed the loan-origination practices that it represented to investors it was following. But for MBIA's provision of financial guaranty insurance, the holders of the RMBS Notes would have been deprived of payments on the Notes. The purchasers of the RMBS Notes did not have knowledge of any significant delinquencies or defaults on the underlying mortgage loans until November 2007 at the earliest, when the trustees of the Trusts began making claims to MBIA, and even then it was only to ensure timely payments to the Note Purchasers, for missed principal and interest payments.

9. The allegations herein are confirmed and bolstered in great detail by a report issued by the Office of Inspector General ("OIG"), Department of the Treasury on or about February 26, 2009 (the "OIG Audit Report"). The OIG Audit Report found that the "underlying cause of [IndyMac Bank's] failure was the unsafe and unsound manner in which the thrift was operated," and that IndyMac management was aware of these unsound practices, including deficiencies in underwriting controls. OIG Audit Report at 3. The OIG Audit Report, attached hereto as Exhibit A and incorporated in full herein by reference, details numerous examples of specific evidence demonstrating both the falsity of IndyMac's representations, and IndyMac's knowledge that its representations and omissions were materially false and misleading.

10. The allegations in this Complaint are also confirmed by a report issued by the Center for Responsible Lending ("CRL"), "a national nonprofit, nonpartisan research

and policy organization dedicated to protecting home ownership and family wealth by working to eliminate abusive financial practices." CRL Report at 1. In preparing its report, the CRL interviewed numerous former IndyMac employees, including underwriters, and reviewed lawsuits pending against IndyMac. The CRL Report, entitled *IndyMac: What Went Wrong?* – How an "Alt-A" Leader Fueled its Growth with Unsound and Abusive Mortgage Lending" dated June 30, 2008 (the "CRL Report"), details many of IndyMac's lending and underwriting abuses. For example, the CRL Report described instances in which underwriters or mortgage brokers inflated borrower incomes so that they could approve them for loans for which they otherwise were not qualified. The CRL Report, attached hereto as Exhibit B and incorporated in full herein by reference, details numerous examples of specific evidence demonstrating both the falsity of IndyMac's representations, and IndyMac's knowledge that its representations and omissions were materially false and misleading. The CRL Report ultimately concluded that:

> An investigation by the Center for Responsible Lending has uncovered substantial evidence that IndyMac Bank and its parent, IndyMac Bancorp, engaged in unsound and abusive lending during the mortgage boom, routinely making loans without regard to borrowers' ability to repay. These practices left many deep in debt and struggling to avoid foreclosure.

CRL Report at 2.

11. MBIA brings these claims as subrogee of the Note Purchasers it has insured. As a result of IndyMac's misrepresentations and omissions of material facts explained herein, the Note Purchasers have incurred losses that have been passed onto MBIA, as insurer under its Note Guaranty Insurance Policy, Certificate Guaranty Insurance Policies (collectively "Guaranty Insurance Policies") and companion Insurance and Indemnity Agreements. MBIA has already paid out over $487 million dollars on its guarantees and is exposed to claims in excess of $566 million dollars more.

12. Accordingly, MBIA, standing in the shoes of the Note Purchasers as a subrogee, now brings this action against Defendants for violations of CAL. CORP. CODE

Sections 25401, 25501, 25504 and 25504.1. MBIA also asserts subrogee claims for common-law fraud, negligent misrepresentation, and declaratory relief.

Parties

13. Plaintiff MBIA is a New York stock insurance corporation with its principal place of business in Armonk, New York. MBIA is one of the nation's oldest and largest monoline insurers, providing financial guarantee insurance and other forms of credit protection generally on financial obligations sold in the new-issue and secondary markets.

14. Defendant IndyMac ABS is a Delaware corporation with its principal place of business in Pasadena, California. IndyMac ABS served as the Depositor for the 2006-H4, INDS 2007-1 and INDS 2007-2 transactions.

15. Defendant Home Equity Mortgage Loan Asset-Backed Trust, Series 2006-H4 is a statutory trust formed under the laws of the State of Delaware and organized by defendant IndyMac Bank for the purpose of issuing notes to investors pursuant to a registration statement and prospectus filed with the SEC.

16. Defendant Home Equity Mortgage Loan Asset-Backed Trust, Series INDS 2007-1 is a common law trust formed under the laws of the State of New York and organized by defendant IndyMac Bank for the purpose of issuing certificates to investors pursuant to a registration statement and prospectus filed with the SEC.

17. Defendant Home Equity Mortgage Loan Asset-Backed Trust, Series INDS 2007-2 is a common law trust formed under the laws of the State of New York by defendant IndyMac Bank for the purpose of issuing certificates to investors pursuant to a registration statement and prospectus filed with the SEC.[2]

[2] In the 2006-H4 transaction, the securities issued included notes and certificates. The certificates were not offered under the Prospectus and Supplemental Prospectus. Therefore, as to the 2006-H4 transaction, only the notes are at issue in this lawsuit. In the INDS 2007-1 and INDS 2007-2 transactions, the only securities issued were certificates. The certificates were offered under the Prospectus and Supplemental Prospectus for the INDS 2007-1 and INDS 2007-2 transaction. The notes (in the 2006-H4 transaction) and

(footnote continued)

18. IndyMac Securities Corp. ("IndyMac Securities") was a Delaware corporation having its principal place of business in Pasadena, California. IndyMac Securities acted as an underwriter with respect to the 2006-H4, INDS 2007-1 and INDS 2007-2 Note offerings. IndyMac is informed and believes that IndyMac Securities was dissolved on or about December 10, 2008.

19. Defendant Credit Suisse is a Delaware limited liability company having its principal place of business in New York, New York. Credit Suisse acted as an underwriter with respect to the 2006-H4 Note offering.

20. Defendant UBS is a Delaware corporation having its principal place of business in New York, New York. UBS acted as an underwriter with respect to the INDS 2007-1 and INDS 2007-2 Note offerings.

21. Defendant JPMorgan Chase & Co. is a Delaware corporation, having its principal place of business in New York, New York. MBIA is informed and believes that in or about May 2008, JPMorgan Chase acquired the assets and operations of The Bear Stearns Companies, Inc., including Bear Stearns & Co., Inc., a Delaware corporation, and wholly owned subsidiary of Bear Stearns & Company, Inc., a Delaware corporation (collectively "Bear Stearns"). Bear Stearns acted as an underwriter with respect to the 2006-H4 and INDS 2007-1 Note offerings. As a result of its acquisition of Bear Stearns, JPMorgan is now liable for the Bear Stearns' wrongdoing because it is Bear Stearns's successor-in-interest.

22. Lehman Brothers Inc. ("Lehman Brothers"), a Delaware corporation, is an investment bank and acted as an underwriter with respect to the 2006-H4 Note offering. Lehman Brothers is not named as a Defendant in this Complaint due to the petition for bankruptcy protection under Section 11 of the Bankruptcy Code filed by Lehman Brothers Holdings Inc. on September 15, 2008 and the Order Commencing Liquidation entered on

certificates (in the INDS 2007-1 and INDS 2007-2 transactions) are collectively referred to herein as the "RMBS Notes" or the "Notes".

September 19, 2008 in *Securities Investor Protection Corp. v. Lehman Brothers Inc.*, No. 08 Civ. 8119 (GEL) (S.D.N.Y.). But for this bankruptcy petition and Order Commencing Litigation, Lehman Brothers would be a named Defendant in this action

23. Defendant Michael W. Perry was CEO of IndyMac Bank and Chairman of the Board, Director and CEO of IndyMac Bancorp, a holding company for IndyMac Bank, during times relevant to this action. MBIA is informed and believes that Mr. Perry resides in the County of Los Angeles.

24. Defendant A. Scott Keys was the Executive Vice President and Chief Financial Officer of IndyMac Bancorp until April 25, 2008. MBIA is informed and believes that Mr. Keys resides in the County of Los Angeles.

25. Defendant Jill Jacobson was a vice president of IndyMac ABS, and IndyMac Bank during times relevant to this action. Ms. Jacobson signed the Sale and Servicing, Pooling and Servicing, Underwriting, and Insurance and Indemnity Agreements at issue herein, together with the Guaranty Insurance Policies for the 2006-H4, INDS 2007-1 and INDS 2007-2 transactions at issue herein. MBIA is informed and believes that Ms. Jacobson resides in the County of Los Angeles.

26. Defendant Kevin Callan was the chief executive officer ("CEO") of IndyMac Securities during times relevant to this action. Mr. Callan executed the Underwriting Agreements and Indemnification Agreements for the INDS 2007-1 and INDS 2007-2 transactions at issue herein. MBIA is informed and believes that Mr. Callan resides in the County of Los Angeles.

27. MBIA does not know the true names and capacities of the Defendants named herein as John and Jane Does 1-100, inclusive, and therefore sues said Defendants by fictitious names pursuant to CAL. CIV. PROC. Section 474. The fictitiously-named Defendants are the employees, agents, affiliates, affiliated persons, professional practitioners, alter egos and/or professional consultants of the named Defendants, and the attorneys who had knowledge or reason to know that the named Defendants' misconduct would cause those who purchased the Notes substantial injury. MBIA will amend this

Complaint to allege the true names and capacities of the fictitiously named Defendants when ascertained. Each of the fictitiously named Defendants caused, participated in, or aided or abetted the wrongful acts alleged in the causes of actions set forth below.

Jurisdiction and Venue

28. Subject matter jurisdiction is appropriate in this Court because the amount in controversy exceeds this Court's jurisdictional minimum. Venue is appropriate in Los Angeles County because a substantial part of the events giving rise to the claims for relief occurred in Los Angeles County and Defendants' conduct caused injury in Los Angeles County. This Court also has personal jurisdiction over all Defendants.

29. This action is not removable under the Class Action Fairness Act ("CAFA") because it does not seek damages on behalf of at least 100 persons, 28 U.S.C. Section 1332(d)(11)(B)(i), and if it did, it would nevertheless fall within the securities and/or home-state exceptions to CAFA. 28 U.S.C. Section 1332(d)(3), (d)(4)(B), (d)(9).

30. This action is not removable under the Securities Litigation Uniform Standards Act ("SLUSA") because SLUSA allows removal only of "covered" class actions alleging misrepresentations "in connection with the purchase or sale of a covered security" and seeking damages on behalf of more than 50 persons. 15 U.S.C. § 77bb(f). This action does not involve a "covered security" and does not seek damages on behalf of more than 50 persons or on a representative basis. Further, this action "seeks to enforce a contractual agreement between an insurer and an indenture trustee," 15 U.S.C. § 77bb(f)(3)(C), an exception to SLUSA.

Factual Allegations

31. IndyMac Bank was a mortgage lender that offered mortgage loans to home buyers and owners, including those with limited income or credit history. It did so through Internet advertising, website traffic, affinity relationships, company referral programs, realtors, and its Southern California retail banking branches. IndyMac Bank was also in the business of acquiring mortgages that had been originated by other entities, including

mortgage brokers, mortgage bankers, financial institutions and homebuilders. It served as the Sponsor, Seller and Servicer of the IndyMac Trusts.

32. According to the OIG Audit Report, "[f]rom the time IndyMac Bank transformed from a real estate investment trust into a savings and loan association in July 2000, IndyMac embarked on a path of aggressive growth. From mid-2000 to the first quarter of 2008, IndyMac's assets grew from nearly $5 billion to over $30 billion. Growth resulted from the business strategy of the thrift's Chief Executive Officer (CEO) and board of directors, which was to originate or buy loans and sell them in the secondary market." OIG Audit Report at 6.

33. IndyMac Bank's practice was to securitize the residential mortgage loans that it originated, purchased or otherwise acquired through its affiliates and/or external mortgage brokers or correspondent banks. IndyMac Bank accomplished this by conveying pools of the loans to a depositor in exchange for cash. The depositor then conveyed the pools of mortgage loans to trusts and the pools of loans would be used as collateral for asset-backed securities that would be sold to investors by the underwriters. IndyMac Bank had sponsored such securitization transactions since 1993. According to the OIG Audit Report, "[f]rom its inception as a savings association in 2000, IndyMac grew to the seventh largest savings and loan and ninth largest originator of mortgage loans in the United States. During 2006, IndyMac originated over $90 billion of mortgages." OIG Audit Report at 2.

34. Beginning in or around 2003, there was rising demand on Wall Street for "private label" securitizations of non-conforming loans. Private label securitizations were arranged and underwritten by private firms (i.e., not government-sponsored entities) and were comprised of "non-conforming loans." "Non-conforming loans" are loans that do not conform to specific regulatory guidelines, and therefore cannot be purchased by Fannie Mae or Freddie Mac. Conforming loans -- loans that do conform to the specific regulatory guidelines -- if properly underwritten and serviced, historically have been the most conservative loans, with the lowest rates of delinquency and default, in the residential

mortgage industry. Because they were comprised of non-conforming loans which tended to be riskier loans than those meeting Fannie Mae and Freddie Mac's criteria, private label securitizations generated higher returns for investors, and greater revenues for originators.

35. Increased securitizations required increased loan origination to generate the underlying pools of loans. As it pressed to generate more loans, IndyMac also increased its risk in connection with the loans. As the OIG Audit Report explained:

> IndyMac offered an extensive array of nontraditional mortgage loan products. With these products, it could qualify a wide range of borrowers for a loan. Many of these nontraditional mortgages, however, came with an increased risk of borrower default. For example, IndyMac offered an option ARM [adjustable rate mortgage] where the required minimum payment would not fully cover the monthly interest. This could result in negative amortization of the principal balance if the borrower paid less than the fully amortizing payment. According to an IndyMac official, in 2006, 75 percent of borrowers who took the option ARM were only making the minimum payment.
>
> ARMs comprised nearly 3 of every 4 loans that IndyMac made during the years 2004 through 2006. IndyMac benefited from these loans because of the larger profit that could be made on these products. For example, in 2006, the profit on an ARM was 3 percent compared to 0.9 percent on conforming loans sold to Government Sponsored Enterprises (GSE). By mid-2007, however, the profit on option ARMs and subprime loans had dropped to zero.
>
> These loans proved to be even riskier because for the most part they were originated with less than full documentation. For a "stated income" loan, for example, IndyMac did not require borrowers to provide documentation to support the income on the application.

OIG Audit Report at 8-9 (footnote omitted).

36. The OIG Audit Report concluded that:

> The primary causes of IndyMac's failure were largely associated with its business strategy of originating and securitizing Alt-A loans on a large scale. This strategy resulted in rapid growth and a high concentration of risky assets. From its inception as a savings association in 2000, IndyMac grew to

> the seventh largest savings and loan and ninth largest originator of mortgage loans in the United States. During 2006, IndyMac originated over $90 billion of mortgages.
>
> IndyMac's aggressive growth strategy, use of Alt-A and other nontraditional loan products, insufficient underwriting, credit concentrations in residential real estate in the California and Florida markets, and heavy reliance on costly funds borrowed from the Federal Home Loan Bank (FHLB) and from brokered deposits, led to its demise when the mortgage market declined in 2007. IndyMac often made loans without verification of the borrower's income or assets, and to borrowers with poor credit histories. Appraisals obtained by IndyMac on underlying collateral were often questionable as well. As an Alt-A lender, IndyMac's business model was to offer loan products to fit the borrower's needs, using an extensive array of risky option-adjustable-rate-mortgages (option ARMs), subprime loans, 80/20 loans, and other nontraditional products. Ultimately, loans were made to many borrowers who simply could not afford to make their payments. Regardless, the thrift remained profitable as long as it was able to sell those loans in the secondary mortgage market.
>
> When home prices declined in the latter half of 2007 and the secondary mortgage market collapsed, IndyMac was forced to hold $10.7 billion of loans it could not sell in the secondary market.

OIG Audit Report at 2-3.

I. The Structure and Sale of the Securitizations at Issue

37. At issue in this action are three securitizations issued between December 2006 and March 2007: 2006-H4; INDS 2007-1; and INDS 2007-2.

38. Investors were able to purchase Notes, representing a portion of pools of underlying mortgage loans. The Notes were purchased originally through public offerings of mortgage-backed securities issued by the Trusts. The Notes were then offered for sale to the public by the Underwriter Defendants.

39. Each of the RMBS securitizations here was comprised primarily of pools of adjustable rate, revolving Home Equity Loans and fixed rate mortgage loans secured by second liens. A home equity line of credit ("HELOC") is a variable-rate second lien on

residential property in which a homeowner may borrow against home equity as needed. The borrower's equity in the property (i.e., the value of the property above the amount of the first lien) collateralizes a specified line of credit that may be drawn down by the borrower similar to a credit card. A closed-end second lien ("CES") is also collateralized by the borrower's equity, but the loan is of a fixed amount. Because both are second liens, HELOCs and CESs are junior in priority to the first lien. By their terms, if the property is foreclosed on, the proceeds from the sale of the property must be used to fully satisfy the first lien before the second-lien HELOCs and CESs are paid.

40. The securitizations at issue were comprised of the following mortgage pools:

(a) 2006-H4 is a securitization that was issued on December 21, 2006, with an approximate initial principal mortgage loan balance of $650,000,000. The mortgage loan pool consisted primarily of a pool of certain adjustable rate first and second lien revolving home equity lines of credit and, as of October 31, 2006, contained 10,305 mortgage loans.

(b) INDS 2007-1 is a securitization that was issued on February 14, 2007, with an approximate initial principal mortgage loan balance of $449,550,000. The INDS 2007-1 mortgage loan pool consisted primarily of fixed-rate mortgage loans secured by second liens on one-to-four family residential properties and, as of February 1, 2007, contained 6,970 loans.

(c) INDS 2007-2 is a securitization that was issued on March 22, 2007, with an approximate initial principal mortgage loan balance of $245,625,000. The INDS 2007-2 mortgage loan pool consisted primarily of fixed-rate mortgage loans secured by second liens on one-to-four family residential properties and, as of March 1, 2007, contained 3,956 mortgage loans.

41. For each of the securitizations at issue, IndyMac Bank originated, purchased or otherwise acquired through its affiliates and/or external mortgage brokers or

correspondent banks, the underlying residential mortgages. IndyMac Bank also acted as servicer for the mortgage loans in each securitization. IndyMac Bank then conveyed pools of these mortgage loans to a depositor (IndyMac ABS), also an IndyMac entity, in exchange for cash. IndyMac ABS was an entity formed by IndyMac specifically to act as the depositor in the securitizations. As the depositor, IndyMac ABS conveyed the pools of mortgage loans to the IndyMac-created-Trusts for the purposes of using the mortgage loans as collateral for asset-backed securities that would be sold to investors. The IndyMac-created Trusts then worked with the underwriters, to price and sell the RMBS Notes to investors.

42. Lehman Brothers, Bear Stearns, Credit Suisse and IndyMac Securities acted as underwriters with respect to the 2006-H4 Note offering. UBS, Bear Stearns and IndyMac Securities acted as underwriters with respect to the INDS 2007-1 Note offering. UBS and IndyMac Securities acted as underwriters of the INDS 2007-2 Note offering.

43. The Trusts issued the Notes, which were purchased by one or more of the Underwriter Defendants pursuant to an Underwriting Agreement. The Underwriter Defendants then offered the Notes for sale to the public.

44. For each securitization, the cashflows from the pooled loans (payments of interest and principal) were used to pay obligations on the RMBS Notes. The purchase of each Note was thus the purchase of a right to participate in the cashflows generated by the pool of mortgages. Because the mortgages were the only collateral supporting the Notes, their credit quality was of critical importance to any Note Purchaser.

45. The 2006-H4 securitization included the following "Transaction Documents": (a) a Mortgage Loan Purchase Agreement that provided for the sale of mortgage loans to a depositor, an IndyMac affiliate created to effect the securitizations; (b) a Sale and Servicing Agreement that transferred the mortgage loans to a single purpose trust, and confirmed the terms of IndyMac Bank's engagement by the trust to service the mortgage loans; (c) a Trust Indenture, which among other things, established the rights of holders of securities and the obligations of the trustee; and (d) a Prospectus and

Supplemental Prospectus, which IndyMac and the Underwriter Defendants used to sell the mortgage backed-securities.

46. The INDS 2007-1 and INDS 2007-2 securitizations included the following "Transaction Documents": (a) a Pooling and Servicing Agreement, which transferred the mortgage loans from IndyMac Bank to the depositor, then from the depositor to a single purpose trust, and which confirmed the terms of IndyMac Bank's engagement by the trust to service the mortgage loans; and (b) a Prospectus and Supplemental Prospectus, which IndyMac and the Underwriter Defendants used to sell the mortgage backed-securities.

47. IndyMac Bank (as Seller and Master Servicer), IndyMac ABS (as Depositor), each Trust (as Issuer), and MBIA (as Insurer) entered into an Insurance and Indemnity Agreement that provided the terms for the issuance of an MBIA financial Guaranty Insurance Policy that would be issued to the Trust.

A. The Role of the Underwriter Defendants

48. The Underwriter Defendants chosen by IndyMac Bank to sell the Notes were paid for their work only if the offering was completed and the Notes were offered for sale. Moreover, the Underwriter Defendants were less likely to be hired by IndyMac to underwrite the RMBS offerings if they were unable to bring the Notes to the public for sale. Typically, the lead underwriter on a securitization was compensated by receiving a fee that was a certain percentage of the value of the deal if the securitization was completed. In the 2004 through 2007 time period, the fee was usually anywhere between 25 and 50 basis points. The Underwriter Defendants in general were paid more if riskier loans were included in the securitization. Thus, the Underwriter Defendants had significant financial incentive to finalize and close the securitizations and to bring the Notes to the public for sale, as well as to include riskier loans within the securitizations. On information and belief the Underwriter Defendants received millions of dollars a year in underwriting fees from IndyMac.

49. As part of their responsibilities in connection with the securitizations and the sale of the Notes, the Underwriter Defendants or the issuers retained due diligence firms

ostensibly to assess whether the underlying mortgage loans complied with IndyMac Bank's stated underwriting guidelines.

50. Part of the assessment by the due diligence firms included evaluating a sample of loans from the mortgage loans underlying each securitization selected by the Underwriter Defendants. This process included culling out mortgage loans that were non-compliant with IndyMac's underwriting guidelines.

51. Loans that did not comply were flagged by the third-party due diligence firm and brought to the attention of the Underwriter Defendants. The Underwriter Defendants retained the discretion to determine whether the deviation was permissible due to a compensating factor or whether the particular breach of the underwriting guideline could be cured. If the Underwriter Defendants determined that the deviation was permissible or curable, the mortgage loan remained in the pool of loans underlying the securitization. If the Underwriter Defendants determined that the deviation was a material deviation that could not be cured, they were then supposed to remove the non-compliant loan from the pool of loans underlying the securitization. If a significant number of non-compliant loans were discovered, the Underwriter Defendants were supposed to select another sample for the due diligence firm to analyze in the pool. However, frequently, a second sample was not reviewed because it would delay the sale of the Notes to the public and increase the expense.

52. Upon information and belief, the Underwriter Defendants failed to adequately disclose the true risk profile of the underlying mortgage loans by classifying non-compliant loans flagged by the third-party due diligence firms as permissible due to the presence of so-called compensating factors or by classifying the breaches as curable, when they were not. If adequate disclosures had been made, the credit rating firms rating the Notes would have judged the Notes as riskier investments and the Note Purchasers would not have purchased the Notes.

53. Upon information and belief, in addition to their failure to adequately disclose the true level of non-compliance with IndyMac's underwriting guidelines, the

Underwriter Defendants knew or should have known that the third-party due diligence firms retained to review the quality of the underlying mortgages were not capable of doing and/or had incentives not to perform a thorough review of the loan files. The Underwriter Defendants and the due diligence firms they supervised were under extreme pressure to handle numerous securitizations across multiple issuers in very short time frames. The Underwriter Defendants knew that only superficial due diligence, at best, could be completed.

54. Moreover, given the Underwriter Defendants' financial incentives to complete as many deals as possible, they lacked sufficient incentive to ensure that only compliant loans were included in the pools of loans underlying the securitizations. As a result of the inadequate due diligence and/or disregard and non-disclosure of the true risk profile of the underlying loans, an alarmingly high number of non-compliant loans were included in the securitizations.

B. A Sample RMBS Securitization

55. The manner in which the 2006-H4 securitization was created, marketed and sold is described in detail below. Each of the other transactions is substantially similar in every material respect.

(a) The 2006 H4 Mortgage Loan Purchase Agreement

56. On or about December 21, 2006, IndyMac Bank (as Sponsor) entered into the Mortgage Loan Purchase Agreement with its affiliate Indymac ABS (as Depositor) for the 2006-H4 transaction, in which IndyMac Bank agreed to sell the pool of mortgage loans to IndyMac ABS.

57. The 2006-H4 mortgage loan pool consists of adjustable rate, revolving HELOCs. Approximately 83% of the HELOCs in the 2006-H4 mortgage loan pool were originated by IndyMac Bank. The mortgage loan pool in the 2006-H4 transaction consists of HELOCs that are secured by first or second liens on one-to-four family residential properties. As of October 31, 2006, the mortgage loan pool for 2006-H4 transaction contained 10,305 HELOCs with a stated principal mortgage loan balance of $668,252,014.

(b) The 2006-H4 Amended and Restated Trust Agreement

58. The 2006-H4 Trust was created pursuant to a Trust Agreement dated December 6, 2006, among IndyMac ABS (as Depositor), Wilmington Trust Company (as Owner Trustee), and Deutsche Bank National Trust Company ("Deutsche Bank") (as Administrator).

59. On or about December 21, 2006, the Depositor, the Owner Trustee and the Administrator entered into an Amended and Restated Trust Agreement.

(c) The 2006-H4 Sale and Servicing Agreement

60. On or about December 21, 2006, IndyMac Bank (as Seller and Servicer), the Depositor, the 2006-H4 Trust, and the Indenture Trustee entered into the Sale and Servicing Agreement.

61. Pursuant to the Sale and Servicing Agreement, IndyMac ABS transferred all of its right, title and interest in the HELOCs to the 2006-H4 Trust for the purpose of using the mortgage loans as collateral for Notes to be sold to investors.

(d) The 2006-H4 Indenture Agreement

62. On or about December 21, 2006, the 2006-H4 Trust, as Issuer, and Deutsche Bank, as Indenture Trustee, entered into the Indenture Agreement.

63. The Notes were issued pursuant to the Indenture Agreement.

(e) The 2006-H4 Prospectus

64. The Prospectus for the 2006-H4 Trust, issued on December 11, 2006 and which was disseminated by the Underwriter Defendants, described IndyMac's business and operations. The Prospectus provided a description of IndyMac's purportedly disciplined and conservative underwriting standards. It also described the mortgage loans, and advised that a Supplemental Prospectus would be filed with the SEC at the time of each offering of the Notes.

(f) The 2006-H4 Supplemental Prospectus

65. The Supplemental Prospectus for the 2006-H4 Trust, issued on December 20, 2006 and which was disseminated by the Underwriter Defendants, provided more specific information about the mortgage loans backing the Notes, including representations that the mortgage loans were underwritten in accordance with IndyMac's traditional underwriting standards.

(g) The 2006-H4 Insurance Policy

66. On or about December 21, 2006, MBIA executed the Note Guaranty Insurance Policy, which provided that "MBIA . . . , in consideration of the payment of the premium and subject to the terms of this Note Guaranty Insurance Policy . . . , hereby unconditionally and irrevocably guarantees to any Owner that an amount equal to each full and complete Insured Amount will be received from the Insurer by Deutsche Bank National Trust Company . . . as indenture trustee for the Owners . . . on behalf of the Owners, for distribution by the Indenture Trustee to each Owner of each Owner's proportionate share of the Insured Payment."

67. On or about December 21, 2006, MBIA, IndyMac Bank (as Seller and Servicer), the 2006-H4 Trust, and IndyMac ABS entered into the Insurance and Indemnity Agreement with respect to the 2006-H4 transaction. The Insurance and Indemnity Agreement acknowledged that MBIA "has issued the [Note Guaranty Insurance] Policy, pursuant to which it has agreed to pay in favor of the Indenture Trustee on behalf of the Issuer and for the benefit of the Owners of the Notes certain payments as set forth in the Policy. . . . "[3]

68. MBIA issued the 2006-H4 Note Guaranty Insurance Policy on behalf of IndyMac Bank in favor of the Trustee of the IndyMac-created Trusts, for the benefit of the Note Purchasers.

[3] Although individual provisions may vary slightly, the Insurance Agreements and the Policies are substantially similar, except with respect to the Pool Policy for INDS 2007-1.

C. The Remaining Two Securitizations

69. Like the 2006-H4 transaction, the other two transactions (INDS 2007-1 and INDS 2007-2) were securitized through the use of substantially similar agreements and Transaction Documents containing identical or substantially similar terms, representations, and/or obligations. In addition, IndyMac Bank, each Trust, and MBIA entered into substantially similar Insurance and Indemnity Agreements and MBIA issued virtually identical Guaranty Insurance Policies. Therefore, this Complaint will not set forth in detail the Transaction Documents for the two subsequent transactions. The dates of the remaining transactions are as follows:

INDS 2007-1	February 14, 2007
INDS 2007-2	March 22, 2007

70. INDS 2007-1 is a securitization issued on February 14, 2007, with an approximate initial principal mortgage loan balance of $449,550,000. The INDS 2007-1 mortgage loan pool consists primarily of fixed-rate mortgage loans secured by second liens on one-to-four family residential properties. As of February 1, 2007, it contained 6,970 loans.

71. INDS 2007-2 is a securitization issued March 22, 2007, with an approximate initial principal mortgage loan balance of $245,625,000. The INDS 2007-2 mortgage loan pool consists primarily of fixed-rate mortgage loans secured by second liens on one-to-four family residential properties. As of March 1, 2007, it contained 3,956 mortgage loans.

72. For the INDS 2007-1 and INDS 2007-2 Trusts, the "Transaction Documents" include, among others, the Pooling and Servicing Agreements, which set forth the terms of the sale of the mortgage loans to the relevant trust in connection with the respective transaction, the terms for servicing the mortgage loans in connection with the respective transaction, and the offering materials provided to potential investors and filed with the SEC in connection with the respective transaction. MBIA is an express third-party beneficiary of each Pooling and Servicing Agreement ("PSA"). For the INDS 2007-1

Trust, the Transaction Documents also include a mortgage pool insurance policy ("Pool Policy") issued by Radian Insurance Inc.

II. Defendants' Material Misrepresentations and Omissions

73. Defendants intentionally induced the Note Purchasers to believe that each of the Notes securing the securitizations were of high quality, and were obtained using disciplined underwriting standards. In so doing, Defendants made misrepresentations and omitted material facts in the offering documents as explained in detail herein:

(a) Each of the Trust Defendants issued the Notes pursuant to the Prospectuses and Supplements and was identified as the Issuer on the Prospectuses and Supplements. Accordingly, the Trusts are responsible for the content of the Prospectuses and Supplements and the misrepresentations and material omissions therein.

(b) Each of the Underwriter Defendants disseminated and sold the Notes pursuant to the Prospectuses and the Supplements and was responsible for the content of the Prospectuses and Supplements and the misrepresentations and material omissions therein. The Underwriter Defendants and IndyMac were responsible through the due diligence firms they supervised to ensure that the loans included in the securitizations complied with IndyMac's stated underwriting guidelines. However, given the financial incentives to get the securitizations for sale on the market quickly, the short turn-around time to conclude the due diligence process, and the large number of loans to be reviewed, the Underwriter Defendants and IndyMac knew or should have known that complete and full due diligence was not performed.

74. Since their closing dates, losses incurred on the Note offerings at issue have been extremely large and well in excess of historical losses for securities of their nature. Delinquencies and defaults for mortgage loans on the three securitizations have been substantial, diminishing cash flow to the Trusts, which has required and will continue to require MBIA to satisfy its obligations under the Insurance and Indemnity Agreements and the Guaranty Insurance Policies by making payments to cover the shortfalls. As of

September 1, 2009, MBIA had paid in excess of $487 million in claims in connection with the IndyMac transactions.

A. Misrepresentations Regarding IndyMac's Underwriting Standards

75. IndyMac Bank's underwriting guidelines specified criteria that the mortgage loans purportedly had to meet, depending upon the individual loan program and circumstances of each mortgage loan. In general, the underwriting guidelines stipulated the required documentation to be included in the loan files for each loan product (which may include, depending upon the loan product, verifications of income, assets, closing funds and payment histories, among others) and criteria for eligibility, including tests for CLTV, DTI and FICO score credit scores.[4] Any exceptions to the underwriting guidelines were required to meet specific criteria.

76. Under IndyMac's underwriting guidelines, a borrower could apply for a loan by providing "full documentation" or could apply through other reduced documentation programs that required only "stated income." The underwriting guidelines required, however, that a borrower's stated income be reasonable for the borrower's type of employment, line of work and assets. Further, the stated income had to be reasonable in relation to other factors, such as occupation/source of income, tenure, savings pattern/asset

[4] The CLTV, or combined loan-to-value ratio, is the amount of all loans taken out on a property divided by the fair market value of the property. Lenders use CLTV ratios to gauge the risk of prospective default when more than one loan is used. Higher CLTV ratios indicate a higher risk that borrowers will default because their equity in the property is low.

The DTI, or debt-to-income ratio, is the percentage of debt a consumer carries in relation to the consumer's monthly gross income.

The FICO score is a credit score derived from a credit model developed by Fair Isaac Corporation. This model considers several factors, including past payment punctuality, percentage of credit limit, length of credit history and types of credit used. A higher FICO score indicates better credit.

base, and credit usage and history. IndyMac was also required to review the reasonableness of the stated income for mortgage loans they originated or acquired.

77. Each Prospectus issued in connection with the Note offerings touted IndyMac's "underwriting standards." For example, the 2006-H4 Prospectus stated:

> In general, where a loan is subject to full underwriting review, a prospective borrower applying for a mortgage loan is required to fill out a detailed application designed to provide to the underwriting officer pertinent credit information. As part of the description of the borrower's financial condition, the borrower generally is required to provide a current list of assets and liabilities and a statement of income and expenses, as well as an authorization to apply for a credit report which summarizes the borrower's credit history with local merchants and lenders and any record of bankruptcy. In most cases, an employment verification is obtained from an independent source, typically the borrower's employer. The verification reports the length of employment with that organization, the borrower's current salary and whether it is expected that the borrower will continue employment in the future. If a prospective borrower is self-employed, the borrower may be required to submit copies of signed tax returns. The borrower may also be required to authorize verification of deposits at financial institutions where the borrower has demand or savings accounts.

2006-H4 Prospectus at 36-37.

78. The 2006-H4 Prospectus also stated:

> In determining the adequacy of the Property as collateral, an appraisal is made of each property considered for financing. Except as described in the applicable prospectus supplement, an appraiser is required to inspect the property and verify that it is in good repair and that construction, if new, has been completed. The appraisal is based on the market value of comparable homes, the estimated rental income (if considered applicable by the appraiser) and the cost of replacing the home.

2006-H4 Prospectus at 37.

79. The 2006-H4 Prospectus further stated:

> Once all applicable employment, credit and property information is received, a determination generally is made as to whether the prospective borrower has sufficient monthly

> income available to meet monthly housing expenses and other financial obligations and monthly living expenses and to meet the borrower's monthly obligations on the proposed mortgage loan (generally determined on the basis of the monthly payments due in the year of origination) and other expenses related to the Property such as property taxes and hazard insurance). The underwriting standards applied by sellers, particularly with respect to the level of loan documentation and the mortgagor's income and credit history, may be varied in appropriate cases where factors as low Loan-to-Value Ratios or other favorable credit factors exist.

2006-H4 Prospectus at 37.

80. The 2006-H4 Prospectus Supplement represented that each mortgage loan was underwritten in accordance with IndyMac's traditional underwriting process:

> All of the HELOCs originated by the seller were either originated directly by the seller or originated indirectly by the seller through the Direct Channel [*i.e.*, IndyMac's mortgage professionals, consumer direct, correspondent and conduit channels] by authorized third-party vendors based on the seller's underwriting standards. All of the HELOCs were underwritten generally in accordance with the seller's underwriting standards.

2006-H4 Prospectus Supplement at S-26.

81. The 2006-H4 Prospectus Supplement explained that IndyMac's underwriting standards allow for different levels of documentation, including full documentation, stated income, and pre-approved. The 2006-14 Prospectus Supplement explained:

> For Full Documentation HELOCs, a prospective borrower is required to fill out a detailed application providing pertinent credit information, including tax returns if the borrower is self-employed or received income from dividends and interest, rental properties or other income which can be verified via tax returns. In addition, a borrower (other than a self-employed borrower) must demonstrate income and employment directly by providing alternative documentation in the form of a pay stub showing year-to-date earnings and a W-2 to provide verification of employment. Borrowers that claim other sources of income such as pension, social security, VA benefits and public assistance must provide written documentation that identifies the source and amount of such income, such as an

> award letter, and demonstrate that such income can reasonably be expected to continue for at least 3 years. Income in the form of alimony, child support or separate maintenance income must be substantiated by a copy of the divorce decree or separate maintenance agreement, as applicable.

2006-H4 Prospectus Supplement at S-26.

82. The 2006-H4 Prospectus Supplement described the Stated Income Program as follows:

> Borrowers who qualify for the Stated Income Program need to provide only verbal verification of employment, but will be required to demonstrate that he or she has an average account balance of at least one month's stated income from qualified assets and sources. Closing balances and mortgage loan proceeds, for example, may not be used to meet this requirement. The types of assets that can be considered in determining whether the reserve requirement has been met include funds from checking, savings, money market or CD accounts, stocks, bonds, and mutual funds. The Stated Income Program is not available to borrowers whose credit reports do not show that the borrower has had a mortgage for at least 12 months within the past 3 years.

2006-H4 Prospectus Supplement at S-26-S-27.

83. The 2006-H4 Prospectus Supplement described the Pre-Approved and Invitation to Apply ("ITA") Programs as follows:

> Borrowers who qualify under the ITA Program must provide either two current consecutive pay stubs or two current consecutive tax returns as income verification. A credit report is also required. Because borrowers who qualify under the Pre-Approved Program have high credit scores relative to the combined loan-to-value on the related mortgaged properties, Pre-Approved HELOCs require no documentation with respect to the borrowers' income or employment.

2006-H4 Prospectus Supplement at S-27.

84. The 2006-H4 Prospectus Supplement also set forth certain credit criteria for borrowers under the Full Documentation and Stated Income Programs, including that the borrower could not have: (1) any delinquent mortgage payments of 30 days or more within

the last 12 months; (2) any foreclosures within the last three years; (3) participation in a consumer credit counseling plan within the last two years; and (4) any bankruptcy in the last two years. 2006-H4 Prospectus Supplement at S-27.

85. Similarly, the 2006-H4 Prospectus Supplement set forth certain credit criteria for borrowers under the Pre-Approved and ITA Programs, including that the borrower must not have: (1) any bankruptcy, foreclosure, repossession or debt counseling in the last three years; (2) charge-offs, unpaid collections, tax liens or judgments exceeding $1,000; (3) payment delinquency of 60 days or more on any trade in the last year; (4) any mortgage or HELOC payment delinquency of 30 days or more within the last two years; (5) any non-standard addresses on the credit report, such as a PO Box; or (6) any miscellaneous status codes, such as I.D. Theft. 2006-H4 Prospectus Supplement at S-27-S-28.

86. Each Prospectus Supplement recognized that exceptions may be made to the criteria set forth above, but that other compensating factors must be present:

> The foregoing criteria are guidelines only. On a case-by-case basis, the seller might determine that an applicant warrants an exception as to credit limit, debt-to-income ratio, FICO score, seasoning requirements, prohibition against second homes and combined liens. The seller might also allow an exception if the application reflects certain compensating factors such as high FICO score, low combined loan-to-value ratio, low debt-to-income ratio and high reserves. Accordingly, certain borrowers may qualify for a HELOC that, in the absence of such compensating factors, would not satisfy the seller's underwriting criteria.

2006-H4 Prospectus Supplement at S-30.

87. The above statements regarding application of IndyMac's underwriting guidelines and credit risk management process were false.

88. In reality, IndyMac's deteriorating underwriting practices facilitated and encouraged loan applications that reflected blatant borrower fraud, inadequate documentation, missing verifications (for example, of borrower assets and income), title defects, excessive debt to income ratios, inadequate FICO scores, and other material

violations of IndyMac's underwriting guidelines. IndyMac's failures to adhere to its own stated underwriting guidelines made the Underwriter Defendants' related representations regarding the mortgage loans, and thus the represented safe risk profile attendant to the Notes, materially false and misleading.

B. Failure to Verify Employment and Current Salary of Borrowers

89. The Registration Statements, Prospectuses and Prospectus Supplements falsely represented that IndyMac verified employment and current salary for most loan applicants before approving a mortgage loan.

90. That representation was false. In fact, IndyMac often did not obtain independent verification of income for borrowers who applied under the limited documentation program.

91. IndyMac adopted reduced documentation application programs that excused qualified borrowers from the general requirement of submitting documentation to confirm income and assets. But IndyMac failed to use adequate controls. Rather, it made its reduced documentation applications widely available without careful oversight, a material risk that the Prospectuses and Supplements failed to disclose to the Note Purchasers or the market at large.

92. IndyMac also approved mortgage loans in which the borrower's stated income was unreasonable on its face and could not have been accurately reported. IndyMac was required pursuant to its own credit policy and the standards in the industry to exercise meaningful oversight. It is standard practice among mortgage lenders generally to try to verify employment income that appears suspicious. A borrower who inflates his income is less likely to be able to repay his loan, which leads to a higher incidence of delinquencies and defaults in the mortgage loans, here to the direct detriment of the Note Purchasers. Despite the prevalence of a substantial number of loan applications that contained highly suspicious reported employment income, IndyMac failed to take sufficient, if any, corrective action.

93. In fact, a loan review by MBIA has revealed that a significant number of the defaulted loans in the IndyMac securitizations show material discrepancies from the underwriting guidelines that IndyMac represented it would follow. Of the 6,970 loans included in the mortgage pool for INDS 2007-1, 418 loans -- almost 6% -- were in default as of December 31, 2007. Similarly, of the 3,956 loans included in the mortgage pool for INDS 2007-2, 297 loans -- approximately 7.5% -- were in default as of December 31, 2007. Shockingly, of the 418 defaulted loans for INDS 2007-1 that were reviewed by MBIA, only 17 loans – less than 5% of the loans reviewed – were originated or acquired in material compliance with IndyMac's representations and warranties with respect to its underwriting guidelines and policies. Even worse, of the 297 loans for INDS 2007-2 that were reviewed by MBIA, only 3 loans – less than 1% of the loans reviewed - were originated or acquired in material compliance with IndyMac's representations and warranties with respect to its underwriting guidelines and policies.

94. The high level of material discrepancies demonstrates IndyMac's deliberate or reckless disregard of the very underwriting guidelines it touted while it was selling the Notes at issue in this case. The tight correlation between material discrepancies and defaults/delinquencies further makes plain that IndyMac's misconduct was both a substantial and direct cause of the non-performance of the mortgage loans underlying the Notes.

95. The following examples are illustrative of the mortgage loans in the IndyMac transactions and their non-compliance with Defendants' representations to investors:

(a) On September 22, 2006, a loan with a principal balance of $39,600.00 was made to a borrower in Goodrich, Michigan on a property with an original appraisal value of $198,000.00 and a senior loan balance of $158,400.00. The borrower stated his income to be $8,950.00 per month in 2006 and identified his employment as a truck driver who was not an owner/operator of his vehicle. The borrower had been employed by his current employer for approximately 2 weeks when applying for the loan, demonstrated liquid assets of only $568.00 and demonstrated no prior housing payment history. The stated income was unreasonable, and the borrower's salary was not substantiated by the credit/asset profile. Of note is that the borrower filed for bankruptcy on February 18, 2008, and the borrower's court filings indicate the borrower earned $3,854 per month -- less than 44% of what had been stated at the origination of the loan. (Loan # 6074318 -- INDS 2007-1).

(b) On January 24, 2007, a loan with a principal balance of $70,500.00 was made to a borrower in Rosamond, California on a property with an original appraisal value of $352,654.00 and a senior loan balance of $282,100.00. The borrower stated his income to be $11,000 per month. However, the borrower demonstrated only $3,802.40 in net assets. Further, the borrower was self-employed and had been at her job for only 7 months. The loan file does not contain a CPA letter as required to verify self-employment. Moreover, prior to being self-employed, the borrower was an employee of the mortgage broker issuing the loan and prior to purchasing the property had lived with family. Accordingly, the stated income was unreasonable, and the borrower's salary was not substantiated by the credit/asset profile. Moreover, the comparable properties in the appraisal failed to support the value of the property and indicated a declining market. (Loan # 125257414 – INDS 2007-2).

(c) On February 5, 2007, a loan with a principal balance of $57,750.00 was made to a borrower in Hemet, California on a property with an original appraisal value of $385,000.00 and a senior loan balance of $308,000.00. The borrower stated his income to be $11,700.00 per month as a food court manager at a local Costco Wholesale Club. The stated income was unreasonable based on the borrower's employment. Subsequently, the borrower filed for bankruptcy on November 26, 2007. The borrower's court filings indicated the borrower earned only $4,168 per month, less than 36% of what had been stated at the origination of the loan. Notably, had an accurate income been used to underwrite the loan, the DTI would have been approximately 110%. (Loan # 125280044 – INDS 2007-1).

96. Those mortgage loans are illustrative of IndyMac's failure to comply with its own underwriting guidelines and practices, as represented to Note Purchasers in the Prospectuses and Prospectus Supplements.

97. In addition, a significant number of mortgage loans have DTI ratios far in excess of the underwriting guidelines, have CLTV ratios far in excess of the underwriting guidelines, and were made on the basis of "stated incomes" that were grossly unreasonable. The information conveyed to the Note Purchasers, including information regarding DTI and CLTV statistics for the mortgage loan pools, was materially false.

98. Further, IndyMac misrepresented that the mortgage loans were underwritten based on objective methodologies, were not fraudulently originated, and were not selected for inclusion in the IndyMac transactions adversely to the interests of MBIA and the investors in the IndyMac transactions. IndyMac not only originated mortgage loans with stated incomes that were objectively unreasonable and indicative of outright fraud, but contributed such mortgage loans to the IndyMac transactions notwithstanding their

knowledge that the mortgage loans violated IndyMac's own underwriting guidelines as represented in the offering documents.

99. Indeed, the OIG Audit Report also concluded that IndyMac failed to comply with its underwriting guidelines and practices. The OIG Audit Report stated:

> IndyMac encouraged the use of nontraditional loans. IndyMac's underwriting guidelines provided flexibility in determining whether, or how, loan applicants' employment, income, and assets were documented or verified. The following procedures were used by the thrift:
>
> - No doc: income, employment, and assets are not verified
> - No income/no assets (NINA): income and assets are not verified; employment is verbally verified
> - No ratio: no information about income is obtained; employment is verbally verified; assets are verified
> - Stated income: income documentation is waived, employment is verbally verified, and assets are verified
> - Fast forward: income documentation is sometimes waived, employment is verbally verified, and assets may or may not be verified
>
> To explore the impact of thrift underwriting on loan performance, we reviewed 22 delinquent loans that represented a cross-section of the loan products in IndyMac's loans held to maturity portfolio.
>
> These loans were 90 days or more delinquent as of August 31, 2008. We reviewed the loan files and discussed the loans with IndyMac officials who were retained by FDIC in the conservatorship.
>
> For the loans reviewed, we found little, if any, review of borrower qualifications, including income, assets, and employment.

OIG Audit Report at 11.

C. Misrepresentations Concerning Appraisals

100. The Prospectus Supplements offered in connection with the Note offerings represented that one or more appraisals are required for nearly every mortgage loan. 2006-H4 Prospectus Supplement at S-29.

101. The Prospectus Supplements also set forth certain appraisal requirements for properties under the Full Documentation and Stated Income Programs:

> For second lien HELOCs originated concurrently with a first mortgage, a copy of the appraisal and a set of original photos used for the origination of the new first mortgage are required. For second lien HELOCs that are not originated concurrently with a first mortgage, if the loan amount is less than $100,000, either an [Appraisal value model ("AVM")] or a Freddie Mac form 2055 (Quantitative Analysis Report with exterior inspection only) may be used, depending on whether the AVM provides an appraised value. For second lien HELOCs that are not originated concurrently with a first mortgage, if the loan amount is greater than $100,000, but less than $250,000, a Freddie Mac form 2055 (Quantitative Analysis Appraisal Report with exterior inspection only) is required and the report must include a photo of the front view of the subject property, a location map and comparable sales. For second lien HELOCs that are not originated concurrently with a first mortgage, if the loan amount if greater than $250,000, a Freddie Mac form 1004 (Full Appraisal) is required.

2006-H4 Prospectus Supplement at S-29.

102. The Prospectus Supplements also set forth certain appraisal requirements for properties under the Pre-Approved and ITA Programs: (1) for loans of $75,000 or less, an appraisal value generated by the AVM; (2) for loans between $75,001 and $100,000, a desktop appraisal; (3) for loans between $100,001 and $150,000, a drive-by appraisal; and (4) for loans between $150,001 and $200,000, a full appraisal. 2006-H4 Prospectus Supplement at S-29.

103. The foregoing representations concerning the requirements for appraisals were false.

104. The OIG Audit Report also found that IndyMac failed to comply with its own appraisal guidelines. In discussing a review that the OIG conducted of IndyMac Loans, the OIG Audit Report stated:

> We also found weaknesses with property appraisals obtained to support the collateral on the loans. For example, among other things, we noted instances where IndyMac officials accepted appraisals that were not in compliance with the Uniform Standard of Professional Appraisal Practice (USPAP). We also found instances where IndyMac obtained multiple appraisals on a property that had vastly different values. There was no evidence to support, or explain why different values were determined. In other instances, IndyMac allowed the borrowers to select the appraiser. As illustrative of these problems, the file for one 80/20, $1.5 million loan we reviewed contained several appraisals with values ranging between $639,000 and $1.5 million. There was no support to show why the higher value appraisal was the appropriate one to use for approving the loan.

OIG Audit Report at 11-12.

D. Misrepresentations and Omissions Regarding Servicing of Loans by IndyMac Bank

105. The Servicing Agreements for the HELOC securitizations provide that the Master Servicer will service and administer the loans in a manner consistent with the Servicing Agreement and with industry practices: "[t]he Servicer, as independent contract servicer, shall service and administer the Mortgage Loans in accordance with Accepted Servicing Practices and shall have full power and authority, acting alone, to do any and all things in connection with such servicing and administration which the Servicer may deem necessary or desirable and consistent with the terms of this Agreement." 2006-H4 Sale and Servicing Agreement, Section 3.01. The Pooling and Servicing Agreements contain similar representations: "[f]or and on behalf of the Certificateholders and the Certificate Insurer, the Servicer shall service and administer the Mortgage Loans in accordance with this Agreement and the Servicing Standard." 2007-1 and 2007-2 Pooling and Servicing Agreement, Section 3.01.

106. In reality, IndyMac Bank's servicing of its mortgage loans lagged well behind industry practices. IndyMac Bank knew it was allocating insufficient resources to service and administer the loans, such as personnel to address customer inquiries and to conduct follow-up efforts with delinquent borrowers. IndyMac Bank also knew it was providing inadequate resources for work-out plans. On information and belief, the Master Servicer has also failed to service its mortgage loans in other ways that were consistent with industry practices, including, for example, by refusing to accept partial payments from borrowers. These failures were exacerbated by the company's origination of loans in disregard of its own underwriting guidelines, which led to an extraordinary increase in delinquencies, defaults, foreclosures, bankruptcies, litigation, and other proceedings. The Prospectuses and Prospectus Supplements misrepresented these practices or failed to disclose them in the Notes' offering documents.

III. **Evidence of Defendants' Scienter**

A. **IndyMac ABS**

107. IndyMac ABS, as an IndyMac entity created specifically to effectuate the scheme to transfer IndyMac's risk on its mortgage loans to investors, knew that the Notes were going to be sold based on material misstatements and omissions.

108. IndyMac ABS possessed information regarding the mortgage loans and IndyMac's origination practices that was not available to the Note Purchasers, because the underlying loan information and information about IndyMac's actual (as compared to represented) origination practices were not publicly available to public investors. Full disclosure of the true information about the mortgage loans underlying the Notes would have shown that the representations about the mortgage loans and the securities were untrue and intentionally misleading.

109. IndyMac's underwriting practices also provide strong circumstantial evidence of scienter. On information and belief, IndyMac adopted a corporate culture of writing as many mortgage loans as possible—and at the highest interest rates and fees possible—regardless of the creditworthiness of the borrower. On information and belief,

once IndyMac determined that profit growth through securitization required substantially increased levels of loan origination, IndyMac motivated, and pressured, its affiliates' loan officers and external brokers to drive up loan volume regardless of material deviations from stated underwriting guidelines. IndyMac ABS, as an IndyMac entity, and the individuals responsible for the Prospectuses and Prospectus Supplements knew of these increasingly risky practices.

110. The CRL Report strongly indicates that upper management at IndyMac was aware of, if not behind, IndyMac's failure to abide by its stated underwriting guidelines and practices. For example, the CRL Report quotes a former IndyMac underwriter who states: "I would reject a loan and the insanity would begin. It would go to upper management and the next thing you know it's going to closing." CRL Report at 1.

111. The CRL Report also states:

> Another witness cited in the case, a former IndyMac vice president, claims chief executive Michael Perry and other top managers focused on increasing loan volume "at all costs," putting pressure on subordinates to disregard company policies and simply "push loans through."
>
> Another former employee quoted in the suit claims Perry told him "business guys rule" and "[expletive deleted] you to compliance guys." As a result, this ex-employee claims, IndyMac was about "production and nothing else."

CRL Report at 3-4 (footnotes omitted).

112. IndyMac ABS knew that the statements being made to investors in offering documents contained material misrepresentations and omissions with regard to IndyMac's underwriting practices, because those statements were at odds with IndyMac's practice of issuing highly risky mortgage loans to non-creditworthy borrowers.

113. IndyMac and IndyMac ABS were motivated to securitize the mortgage loans and to convince the Note Purchasers and other investors to purchase IndyMac securities because the securitizations transferred virtually all of the risk of losses on the loans to the Note Purchasers and other investors.

B. The Underwriter Defendants

114. The Underwriter Defendants knew or should have known that they sold Notes pursuant to Prospectuses and Supplements that contained material misstatements and omissions.

115. The Underwriter Defendants were responsible for conducting, and causing to be conducted, the due diligence on samples of the loans included in each of the securitizations. The Underwriter Defendants knew or should have known, however, that because of the pressure to get the offerings available for sale quickly and the sheer number of loans that needed to be reviewed across many deals for many issuers, the due diligence required could not have been done and was not done properly in such a compressed time frame.

116. Moreover given the financial incentives for the Underwriter Defendants to close the deals quickly and move on to the next deal, the Underwriter Defendants allowed non-compliant loans to be included in the securitizations based on their conclusion that compensating factors existed or that the breaches were curable. In addition, there was very little incentive for the Underwriter Defendants to request that a new sample be drawn if there were a significant number of material deviations from underwriting guidelines that could not be cured or where there were no compensating factors present.

117. Given the above, the Underwriter Defendants knew the quality of the underlying mortgage loans was not as represented in the offering documents and the Underwriter Defendants failed to adequately disclose the true risk profile of the underlying loans. The result was the sale of Notes for securitizations that included an alarmingly high number of non-compliant loans.

118. Had the Underwriter Defendants exercised reasonable care, they would or should have known of the material misstatements and omissions contained in the Registration Statements and Prospectuses as set forth above.

C. The Trust Defendants

119. The Trust Defendants also knew that the representations in the Prospectuses and Prospectus Supplements were not true and the omissions therein were materially misleading. The Trust Defendants issued the Notes pursuant to Prospectuses and Prospectus Supplements. The Trust Defendants were each organized by IndyMac. Each Trust Defendant either is charged with IndyMac's knowledge of the above-referenced misstatements and material omissions, or recklessly disregarded the truth. Further, to the extent they did not know of the falsity of the representations set forth above, the Trust Defendants were reckless in issuing the Notes pursuant to the Prospectuses and Prospectus Supplements without any reasonable ground to believe that the misrepresentations in the Prospectuses and Prospectus Supplements were true.

IV. The Note Purchasers' Reliance on the Fraudulent Statements

120. The Note Purchasers justifiably relied on each Defendant's false representations and omissions of material fact regarding IndyMac's underwriting standards and the characteristics of its loans when they purchased the Notes. But for the fraudulent representations and omissions in the Prospectuses, Prospectus Supplements, Registration Statements, and public statements, the Note Purchasers would not have purchased or otherwise acquired the Notes, because those representations and omissions were necessary to assure the Note Purchasers that the Notes were sensible investments.

121. Further, the misstatements sets forth above were material to any reasonable investor. The false statements and misrepresentations and omissions of material fact caused the Notes to be far riskier—and their rate of payment defaults far higher—than described. The mortgage loans underlying the Notes experienced defaults and delinquencies at a much higher rate due to IndyMac's abandonment of its loan-origination guidelines. The missed payments suffered by the Note Purchasers have been much greater than they would have been if the mortgage loans had been as represented.

V. The Note Purchasers' Substantial Damages and MBIA's Rights as Subrogee

122. The mortgage loans pooled in the IndyMac transactions eventually defaulted at a severe and unexpected rate, thus causing significant shortfalls in cash flows to Note Purchasers.

123. Defendants' misconduct has caused substantial harm. Because of the misrepresentations made by IndyMac and then disseminated by Defendants in the offering documents, the loans were more prone to default than they would have been if IndyMac had adhered to its stated underwriting guidelines.

124. MBIA, as subrogee to the claims of the Note Purchasers, has the right to recover for harm to the Note Purchasers. MBIA agreed to provide a Guaranty Insurance Policy to each Trust guaranteeing to the Note Purchasers the payments due under the Notes. The agreement to provide the Guaranty Insurance Policy and policy logistics and remedies for the 2006-H4 Note offering were memorialized in the December 21, 2006 Insurance and Indemnity Agreement between MBIA (as Insurer), IndyMac Bank (as the Master Servicer and as Sponsor), IndyMac ABS (as Depositor), the Trust (as Issuer), and Deutsche Bank (as Indenture Trustee). Similar insurance agreements were entered into for each Note offering. The Insurance and Indemnity Agreement provided that "the Insurer has issued the Policy, pursuant to which it has agreed to pay in favor of the Indenture Trustee on behalf of the Issuer and for the benefit of the Owners of the Notes certain payments as set forth in the Policy . . . ." Insurance and Indemnity Agreement at 1.

125. The Guaranty Insurance Policy provided that:

> MBIA . . . , in consideration of the payment of the premium and subject to the terms of this Note Guaranty Insurance Policy . . . , hereby unconditionally and irrevocably guarantees to any Owner that an amount equal to each full and complete Insured Payment will be received from the Insurer by Deutsche Bank National Trust Company, . . . as indenture trustee for the Owners . . . on behalf of the Owners, for distribution by the Indenture Trustee to each Owner of each Owner proportionate share of the Insured Payment.

Guaranty Insurance Policy at 1.[5]

126. Under the Insurance and Indemnity Agreements, the Indenture Agreement and operational law, MBIA has full rights as subrogee with respect to any payments it has made. Guaranty Insurance Policy at 2 ("Subject to the terms of the Agreement, the Insurer shall be subrogated to the rights of each Owner to receive payments under the Obligations to the extent of any payment by the Insurer hereunder.").

127. The Indenture Agreement provides:

> The Insurer shall, to the extent it makes any payment with respect to the Notes, become subrogated to the rights of the recipient of such payments to the extent of such payments. Subject to and conditioned upon any payment with respect to the Notes by or on behalf of the Insurer, the Indenture Trustee shall assign to the Insurer all rights to the payment of interest or principal with respect to the Notes which are then due for payment to the extent of all payments made by the Insurer.

Indenture Agreement, Section 5.12.

128. The Sale and Servicing Agreement also provides that:

> The Seller, the Depositor, the Servicer and the Indenture Trustee acknowledge, and each Holder by its acceptance of a Note agrees, that without the need for any further action on the part of the Insurer, the Seller, the Depositor, the Servicer, the Indenture Trustee or the Certificate Registrar (a) to the extent the Insurer [MBIA] makes payments, directly or indirectly, on account of principal of or interest on any Notes to the Holders of such Notes, the Insurer will be fully subrogated to the rights of such Holders to receive such principal and interest, as applicable, from the Trust and (b) the Insurer shall be paid such principal and interest but only from the sources and in the manner provided herein and in the Insurance Agreement for the payment of such principal and interest.

[5] Pursuant to the Insurance and Indemnity Agreement: "IndyMac, the Depositor, the Issuer, and the Indenture Trustee agree that the Insurer shall have all rights of a third-party beneficiary in respect of the Indenture and each other Transaction Document to which it is not a signing party . . . and hereby incorporate and restate their representations warranties and covenants as set forth therein for the benefit of the Insurer." Insurance and Indemnity Agreement, Section 4.04(e).

Sale and Servicing Agreement, Section 4.02.

129. As a result of Defendants' conduct, the Trustee has submitted claims on behalf of the Note Purchasers in excess of $487 million based on the Trusts' inability to make required payments on the Notes. MBIA has been forced to pay those shortfalls.

130. The delinquencies and defaults the mortgage loans have suffered have greatly reduced the cashflows available to pay Note Purchasers going forward, making further missed principal and interest payments inevitable.

FIRST CAUSE OF ACTION

(Against IndyMac ABS, the Trust Defendants and the Underwriter Defendants for Violations of CAL. CORP. CODE § 25401 and § 25501)

131. MBIA incorporates by reference and realleges each and every allegation as set forth above in paragraphs 1 through 130 as if fully set forth herein.

132. Under CAL. CORP. CODE Section 25401, "[i]t is unlawful for any person to offer or sell a security in this state . . . by means of any written or oral communication, which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading."

133. The CAL. CORP. CODE makes any person who violates Section 25401 liable to those who purchase or sell a security.

134. IndyMac ABS, the Trust Defendants, and the Underwriter Defendants qualify as sellers of the Notes because they issued, offered and/or sold the Notes to the public.

135. In offering and selling the Notes, IndyMac ABS, each of the Trust Defendants and the Underwriter Defendants provided materially false and misleading information to the Note Purchasers and omitted material facts regarding the 2006-H4,

INDS 2007-1, and INDS 2007-2 transactions in the Prospectuses, Prospectus Supplements, and Registration Statements.

136. The misstatements, misrepresentations and omissions referred to herein are of material facts within the meaning of Section 25401 because they concern matters a reasonable investor would consider in deciding to invest.

137. The Note Purchasers suffered damages as a result of IndyMac ABS's, the Trust Defendants' and the Underwriter Defendants' violations.

138. The Note Purchasers did not know, or in the exercise of due diligence could not have known, of the untruths and omissions.

139. Under the Indenture Agreement and Guaranty Insurance Policies quoted above, and the laws of the State of California, MBIA may bring these claims as the Note Purchasers' subrogee.

140. By reason of the foregoing, IndyMac ABS, the Trust Defendants and the Underwriter Defendants violated CAL. CORP. CODE Section 25401. IndyMac ABS, the Trust Defendants and the Underwriter Defendants are liable under CAL. CORP. CODE Section 25501, which provides a private right of action for violations of CAL. CORP. CODE Section 25401, to MBIA as subrogee to the extent of any and all payments made by MBIA.

SECOND CAUSE OF ACTION

(Against IndyMac ABS, the Individual Defendants and Does 51-100 for Violations of CAL. CORP. CODE § 25504)

141. MBIA incorporates by reference and realleges each and every allegation as set forth above in paragraphs 1 through 140 as if fully set forth herein.

142. IndyMac ABS, the Individual Defendants and Does 51-100 are liable for the above-stated violations of CAL. CORP. CODE Section 25401 because they were controlling persons of one or more of IndyMac ABS, the Trust Defendants and/or the Underwriter Defendants under CAL. CORP. CODE Section 25504.

143. Defendant Michael Perry was the CEO of IndyMac Bank and Chairman of the Board, as well as the Director and CEO of IndyMac Bancorp during times relevant to this action. Defendant A. Scott Keys was the Executive Vice President and Chief Financial Officer of IndyMac Bancorp until April 25, 2008. Defendant Jill Jacobson was a vice president of IndyMac ABS, and IndyMac Bank during times relevant to this action. Ms. Jacobson signed the Sale and Servicing, Pooling and Servicing, Underwriting, and Insurance and Indemnity Agreements alleged herein, together with the Guaranty Insurance Policies alleged herein. Defendant Kevin Callan was the CEO of IndyMac Securities during times relevant to this action. Mr. Callan executed the Underwriting Agreements and Indemnification Agreements for the INDS 2007-1 and INDS 2007-2 transactions at issue herein.

144. Does 51-100 are officers, directors, agents, affiliated persons, and/or employees of IndyMac, the Trust Defendants and/or the Underwriter Defendants, and each of them controlled one or more of IndyMac ABS, the Trust Defendants and/or the Underwriter Defendants.

145. The Note Purchasers suffered damages as a result of the violations of Section 25401 by primary violators of which the above Defendants were control persons.

146. The Note Purchasers did not know, or in the exercise of due diligence could not have known, of the untruths and omissions.

147. Under the Indenture Agreement and Guaranty Insurance Policies, and the laws of the State of California, MBIA may bring these claims as the Note Purchasers' subrogee.

148. By reason of the foregoing, IndyMac ABS, the Individual Defendants and Does 51-100 are jointly and severally liable as control persons under Section 25504 of the CAL. CORP. CODE to MBIA as subrogee of the Note Purchasers.

THIRD CAUSE OF ACTION

(Against IndyMac ABS, the Trust Defendants, the Underwriter Defendants and Does 1-50 for Violations of CAL. CORP. CODE § 25504.1)

149. MBIA incorporates by reference and realleges each and every allegation as set forth above in paragraphs 1 through 148 as if fully set forth herein.

IndyMac ABS

150. Defendant IndyMac ABS was at all times mentioned herein a limited purpose finance subsidiary of IndyMac Bank, and the depositor in each of the securitizations at issue.

151. At the time of the acts alleged herein, IndyMac ABS materially assisted the Trust Defendants' and the Underwriter Defendants' violations of CAL. CORP. CODE Section 25401 in that it transferred the mortgage loans to the Trust Defendants, which in turn issued the Notes.

152. IndyMac ABS acted with intent to deceive or defraud.

The Underwriter Defendants

153. The Underwriter Defendants underwrote offerings of mortgage-backed securities.

154. At the time of the acts alleged herein, the Underwriter Defendants materially assisted the IndyMac ABS's and the Trust Defendants' violations of CAL. CORP. CODE Section 25401 in that they acted as underwriters for the securitizations at issue, and assisted in pricing and selling Notes to investors, structuring and marketing the transactions, and making SEC filings.

155. On information and belief, the Underwriter Defendants acted with intent to deceive or defraud.

156. The Underwriter Defendants relied on third-party party due diligence firms to ostensibly confirm that the underlying mortgage loans in the securitizations complied with IndyMac's stated underwriting guidelines. However, the Underwriter Defendants

knew or should have known that because of the pressure to get the offerings available for sale quickly and the sheer number of loans that needed to be reviewed across many deals for many issuers, the due diligence required could not have been done and was not done properly in such a compressed time frame.

157. In addition, given the financial incentives for the Underwriter Defendants to bring the securitizations to the market regardless of the quality of the loans included within them, the Underwriter Defendants allowed non-compliant loans to be included in the securitizations based on their conclusions that compensating factors existed or the breaches were curable. Specifically, the Underwriter Defendants were paid for their work only if the offering was completed and the Notes offered for sale. The Underwriter Defendants also were paid higher fees if riskier loans were included in the securitizations. Moreover, the Underwriter Defendants knew that IndyMac would not continue to use them for the securitizations if they were unable to offer the Notes for sale quickly and with little resistance to the loans included in the securitizations.

158. The Underwriter Defendants had no incentive to require non-compliant loans to be replaced or to run second samples when alarmingly high deviations were discovered in the sample they were required to send to the due diligence firms. Thus, the Underwriter Defendants knew the quality of the underlying mortgage loans was not as represented in the offering documents and the Underwriter Defendants knowingly failed to adequately disclose the true risk profile of the underlying loans.

The Trust Defendants

159. The Trust Defendants were, at all times herein mentioned, trusts formed by IndyMac Bank for the limited purpose of issuing Notes to investors.

160. At the time of the acts alleged herein, the Trust Defendants materially assisted IndyMac ABS's and the Underwriter Defendants' violations of CAL. CORP. CODE Section 25401 in that they issued the Notes to investors.

161. The Trust Defendants acted with intent to deceive or defraud.

Does 1-50

162. Each of Does 1-50 was, at all times herein mentioned, a corporation, a partnership, a limited liability company, a joint venture, an association, a joint stock company, a trust, and/or an unincorporated organization.

163. At the time of the acts alleged herein, each of Does 1-50 materially assisted IndyMac ABS's, the Trust Defendants' and the Underwriter Defendants' violation of CAL. CORP. CODE Section 25401. Each of Does 1-50 acted with intent to deceive or defraud.

164. Under the Indenture Agreement and Guaranty Insurance Policies quoted above, and the laws of the State of California, MBIA may bring these claims as the Note Purchasers' subrogee.

165. By reason of the foregoing, IndyMac ABS, the Underwriter Defendants, each of the Trust Defendants, and each of Does 1-50 materially assisted the violations of CAL. CORP. CODE Section 25401, and are jointly and severally liable to MBIA as subrogee under CAL. CORP. CODE Section 25504.1.

FOURTH CAUSE OF ACTION

(Against IndyMac ABS, the Trust Defendants, the Individual Defendants and Does 1-100 for Common-Law Fraud)

166. MBIA incorporates by reference and realleges each and every allegation as set forth above in paragraphs 1 through 165 as if fully set forth herein.

IndyMac ABS

167. As set forth in detail above, IndyMac ABS made fraudulent and false statements of material fact, and intentionally omitted material facts, in connection with the offer and sale of the Notes.

168. IndyMac ABS knew that the above-listed representations and omissions were false and/or misleading when made.

169. IndyMac ABS deliberately made misleading and false statements with the intent to defraud the Note Purchasers.

170. The Note Purchasers justifiably relied on IndyMac ABS's false representations and misleading omissions.

171. Had the Note Purchasers known the true facts regarding IndyMac's underwriting practices and quality of the loans making up the securitizations, the Note Purchasers would not have purchased the Notes.

172. As a result of IndyMac ABS's false and misleading statements and omissions, as alleged herein, the Note Purchasers have suffered damages in an amount not yet fully ascertained.

The Trust Defendants

173. As set forth in detail above, the Trust Defendants made fraudulent and false statements of material fact and intentionally omitted material facts in connection with the offer and sale of the Notes.

174. Each of the Trust Defendants knew that the above-listed representations and omissions were false and/or misleading when made.

175. Each of the Trust Defendants deliberately made the above-listed misleading and false statements with the intent to defraud the Note Purchasers.

176. The Note Purchasers justifiably relied on the Trust Defendants' representations and false statements.

177. Had the Note Purchasers known the true facts regarding the Trust Defendants' underwriting practices and quality of the loans making up the securitizations, the Note Purchasers would not have purchased the Notes.

178. As a result of the Trust Defendants' false and misleading statements and omissions, as alleged herein, the Note Purchasers have suffered damages in an amount not yet fully ascertained.

The Individual Defendants

179. The Individual Defendants made fraudulent and false statements in material fact, and omitted material facts, in connection with the offer and sale of the Notes as set forth above.

180. The Individual Defendants knew that the above-listed statements were false with made. They knew facts or had access to information suggesting that their public statements, and IndyMac's statements, were untrue and/or materially misleading, but they failed to disclose that information.

181. The Individual Defendants intended to defraud the Note Purchasers. The Individual Defendants benefitted from the fraud in the form of increased revenue for the entities they worked for, and, upon information and belief, increased compensation and increased value of their investment in their employers.

182. The Note Purchasers justifiably relied on the Individual Defendants' representations and false statements.

183. Had the Note Purchasers known the true facts regarding the Individual Defendants' false and misleading statements, the Note Purchasers would not have purchased the Notes.

184. As a result of the Individual Defendants' false and misleading statements and omissions, as alleged herein, the Note Purchasers have suffered damages in an amount not yet fully ascertained.

Does 1-100

185. Each of Does 1-100 made fraudulent and false statements of material fact and omitted material facts in connection with the offer and sale of the Notes.

186. Each of Does 1-100 knew that the above-listed statements were false when made.

187. Each of Does 1-100 intended to defraud the Note Purchasers.

188. The Note Purchasers justifiably relied on Does 1-100's representations and false statements.

189. Had the Note Purchasers known the true facts regarding the false and misleading statements of Does 1-100, the Note Purchasers would not have purchased the Notes.

190. As a result of Does 1-100's false and misleading statements and omissions, as alleged herein, the Note Purchasers have suffered damages in an amount not yet fully ascertained.

191. Under the Indenture Agreement and Guaranty Insurance Policies, and the laws of the State of California, MBIA may bring these claims as the Note Purchasers' subrogee.

192. By reason of the foregoing, IndyMac ABS, the Trust Defendants, Jill Jacobson, Kevin Callan and Does 1-100 are liable to MBIA as subrogee for common-law fraud.

FIFTH CAUSE OF ACTION

(Against IndyMac ABS, the Trust Defendants, the Underwriter Defendants, the Individual Defendants and Does 1-100 for Negligent Misrepresentation)

193. MBIA incorporates by reference and realleges each and every allegation as set forth above in paragraphs 1 through 192 as if fully set forth herein.

194. IndyMac ABS's, the Trust Defendants', the Underwriter Defendants', the Individual Defendants' and Does 1-100's material misrepresentations and omissions set forth above were made without any reasonable ground for believing that the representations were true.

195. IndyMac ABS, the Trust Defendants, the Underwriter Defendants, the Individual Defendants and Does 1-100 intended that the material misrepresentations and omissions would induce the Note Purchasers to purchase the Notes.

196. The Note Purchasers justifiably relied on the material misrepresentations and omissions of IndyMac ABS, the Trust Defendants, the Underwriter Defendants, the Individual Defendants and Does 1-100 and were induced to purchase the Notes.

197. Had the Note Purchasers known the true facts regarding IndyMac's underwriting practices and the quality of the loans making up the securitizations, the Note Purchasers would not have purchased the Notes.

198. As a result of IndyMac ABS's, the Trust Defendants', the Underwriter Defendants', the Individual Defendants' and Does 1-100's negligent misrepresentations, the Note Purchasers have suffered damages in an amount not yet fully ascertained.

199. Under the Indenture Agreement and Guaranty Insurance Policies, and the laws of the State of California, MBIA may bring these claims as the Note Purchasers' subrogee.

200. By reason of the foregoing, IndyMac ABS, the Trust Defendants, the Underwriter Defendants, the Individual Defendants and Does 1-100 are liable to MBIA as subrogee for negligent misrepresentation.

SIXTH CAUSE OF ACTION

(For Declaratory Relief Against All Defendants)

201. MBIA incorporates by reference and realleges each and every allegation as set forth above in paragraphs 1 through 200 as if fully set forth herein.

202. An actual controversy has arisen and now exists between MBIA and Defendants concerning their rights and duties under the Guaranty Insurance Policies. Specifically, on information and belief, Defendants contend that MBIA does not have a right as subrogee of each Note Purchaser to recover from Defendants to the extent MBIA has made payments to the Note Purchasers.

203. Pursuant to CAL. CIV. PROC. Section 1060, MBIA desires a judicial determination of its rights and duties under the Guaranty Insurance Policies and a judgment declaring that:

a. MBIA is subrogated to the rights of each Note Purchaser;

b. MBIA is entitled to recover from Defendants, without limitation, to the full extent of any and all past and future payments made under its Guaranty Insurance Policies.

204. A judicial determination is necessary and appropriate at this time and under these circumstances for the parties to ascertain their rights and obligations to one another

and to avoid the hardship caused on the parties and the Note Purchasers by a protracted dispute and further delay.

PRAYER FOR RELIEF

WHEREFORE MBIA prays for judgment on its behalf as follows:

1. On the first cause of action, for violations of CAL. CORP. CODE Sections 25401 and 25501, relief in the form of damages based on reimbursement to the full extent of payments MBIA has made to the Note Purchasers;

2. On the second cause of action, for violations of CAL. CORP. CODE Section 25504, relief in the form of damages to the full extent of payments MBIA has made to the Note Purchasers;

3. On the third cause of action, for violations of CAL. CORP. CODE Section 25504.1, relief in the form of damages to the full extent of payments MBIA has made to the Note Purchasers;

4. On the fourth cause of action, for common-law fraud, relief in the form of damages to the full extent of payments MBIA has made to the Note Purchasers;

5. On the fifth cause of action, for negligent misrepresentation, for relief in the form of damages to the full extent of payments MBIA has made to the Note Purchasers;

7. On the sixth cause of action, for declaratory relief, relief in the form of a declaration against all Defendants of the parties' rights and obligations with respect to the Guaranty Insurance Policies, including, without limitation, MBIA's right to recover any and all past and future payments made under its policies; and

8. Such other and further relief as the Court may deem just and proper.

DATED: September 22, 2009

QUINN EMANUEL URQUHART OLIVER &
HEDGES, LLP

By____
Harry A. Olivar, Jr.
Attorneys for Plaintiff MBIA Insurance
Corporation

JURY DEMAND

1. MBIA requests a trial by jury on all issues so triable.

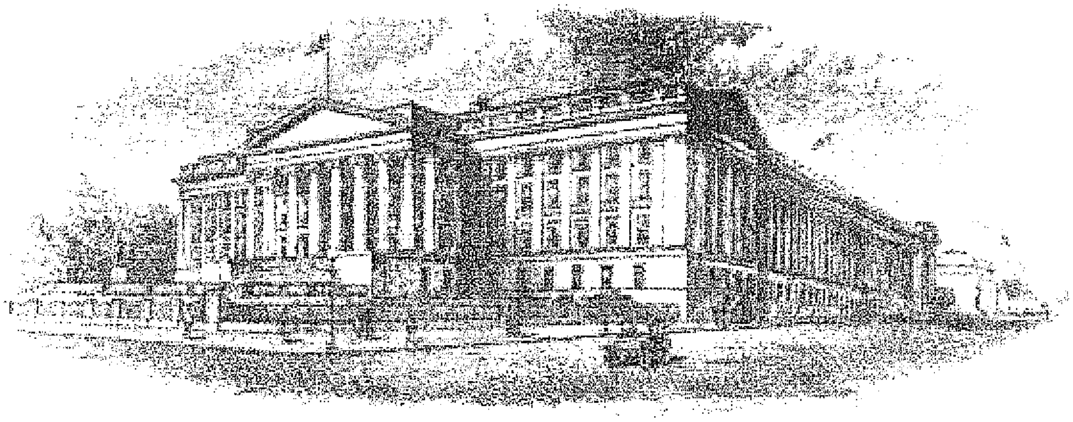
DATED: September 22, 2009

QUINN EMANUEL URQUHART OLIVER &
HEDGES, LLP

By
Harry A. Olivar, Jr.
Attorneys for Plaintiff MBIA Insurance
Corporation

EXHIBIT A

Audit Report



OIG-09-032

SAFETY AND SOUNDNESS: Material Loss Review of IndyMac Bank, FSB

February 26, 2009

This report was reposted on March 4, 2009, to reflect a change in the text on page 24, since the original version was posted on February 26, 2009. The original version of the report incorrectly stated "IndyMac's internal review found several problems, including (1) a $517 million bridge loan for which an appraisal was not obtained...." The report should have stated $517,000 instead of $517 million. This correction does not affect any of the findings, conclusions, or recommendations contained herein.

Office of Inspector General

Department of the Treasury

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Abbreviations

ALLL	Allowance for Loan and Lease Losses
ARM	Adjustable Rate Mortgage
CEO	Chief Executive Officer
FDIC	Federal Deposit Insurance Corporation
FHLB	Federal Home Loan Bank
GSE	Government Sponsored Enterprise
HBD	Home Builders Division
HCL	Home Construction Lending
IndyMac	IndyMac Bank, FSB
IPA	Independent Public Accountant
LTV	Loan to Value
MOU	Memorandum of Understanding
MRBA	Matters Requiring Board Attention
OIG	Department of the Treasury Office of Inspector General
OTS	Office of Thrift Supervision
PCA	Prompt Corrective Action
ROE	Report of Examination
USPAP	Uniform Standard of Professional Appraisal Practice

OIG

Audit Report

The Department of the Treasury
Office of Inspector General

February 26, 2009

John M. Reich, Director
Office of Thrift Supervision

This report presents the results of our review of the failure of IndyMac Bank, FSB (IndyMac) of Pasadena, California and the supervision of the institution by the Office of Thrift Supervision (OTS). Our review was mandated under section 38(k) of the Federal Deposit Insurance Act, as amended. OTS closed IndyMac on July 11, 2008 and named the Federal Deposit Insurance Corporation (FDIC) as conservator. As of December 31, 2008, FDIC estimated that IndyMac's failure would cost the Deposit Insurance Fund $10.7 billion.

Section 38(k) requires that we determine why IndyMac's problems resulted in a material loss to the insurance fund, review OTS's supervision of IndyMac, including implementation of the prompt corrective action (PCA) provisions of section 38, and make recommendations for preventing any such loss in the future. Section 38(k) also requires that we issue a report within 6 months from when the loss becomes apparent.

We also wish to note that we are performing a separate audit of the circumstances surrounding a questionable May 2008 capital infusion by IndyMac's holding company. We provided a status report of this audit to former Secretary Paulson in a memorandum dated December 18, 2008. We also informed the Department of the Treasury's congressional oversight committees about this matter.

We conducted our fieldwork from September 2008 through December 2008 at OTS's headquarters in Washington, DC; OTS's

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regional office in Daly City, California; and IndyMac's headquarters in Pasadena, California. We reviewed the supervisory files and interviewed key officials involved in the regulatory, supervisory, and enforcement matters. Appendix 1 contains a more detailed description of our material loss review objectives, scope, and methodology. Appendix 2 contains background information on IndyMac and OTS's thrift supervision processes. We also provide a glossary of terms as appendix 3 (various terms when first used throughout the report are underlined and hyperlinked to the glossary). A chronology of significant events related to IndyMac and supervision of the thrift is provided in appendix 4. Appendix 5 shows OTS's IndyMac examinations and enforcement actions from 2001 through 2008. Appendix 6 contains examples of delinquent loans and underwriting weaknesses.

Results in Brief

The primary causes of IndyMac's failure were largely associated with its business strategy of originating and securitizing Alt-A loans on a large scale. This strategy resulted in rapid growth and a high concentration of risky assets. From its inception as a savings association in 2000, IndyMac grew to the seventh largest savings and loan and ninth largest originator of mortgage loans in the United States. During 2006, IndyMac originated over $90 billion of mortgages.

IndyMac's aggressive growth strategy, use of Alt-A and other nontraditional loan products, insufficient underwriting, credit concentrations in residential real estate in the California and Florida markets, and heavy reliance on costly funds borrowed from the Federal Home Loan Bank (FHLB) and from brokered deposits, led to its demise when the mortgage market declined in 2007. IndyMac often made loans without verification of the borrower's income or assets, and to borrowers with poor credit histories. Appraisals obtained by IndyMac on underlying collateral were often questionable as well. As an Alt-A lender, IndyMac's business model was to offer loan products to fit the borrower's needs, using an extensive array of risky option-adjustable-rate-mortgages (option ARMs), subprime loans, 80/20 loans, and other nontraditional products. Ultimately, loans were made to many borrowers who simply could not afford to make their payments. Regardless, the

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thrift remained profitable as long as it was able to sell those loans in the secondary mortgage market.

When home prices declined in the latter half of 2007 and the secondary mortgage market collapsed, IndyMac was forced to hold $10.7 billion of loans it could not sell in the secondary market. Its reduced liquidity was further exacerbated in late June 2008 when account holders withdrew $1.55 billion in deposits. This "run" on the thrift followed the public release of a letter from Senator Charles Schumer to the FDIC and OTS. The letter outlined the Senator's concerns with IndyMac. While the run was a contributing factor in the timing of IndyMac's demise, the underlying cause of the failure was the unsafe and unsound manner in which the thrift was operated.

Although OTS conducted timely and regular examinations of IndyMac and provided oversight through off-site monitoring, its supervision of the thrift failed to prevent a material loss to the Deposit Insurance Fund. The thrift's high-risk business strategy warranted more careful and much earlier attention.

OTS viewed growth and profitability as evidence that IndyMac management was capable. Accordingly OTS continued to give the thrift high composite CAMELS ratings right up until shortly before it failed in 2008. We found that OTS identified numerous problems and risks, including the quantity and poor quality of nontraditional mortgage products. However, OTS did not take aggressive action to stop those practices from continuing to proliferate. OTS had at times as many as 40 bank examiners involved in the supervision of IndyMac; however, the examination results did not reflect the serious risks associated with IndyMac's business model and practices. OTS examiners reported Matters Requiring Board Attention (MRBA) to the thrift, but did not ensure that the thrift took the necessary corrective actions. OTS also did not always report all problems found by the examiners, which were evident in the workpapers but not in the Reports of Examination (ROE). OTS relied on the cooperation of IndyMac management to obtain needed improvements. However, IndyMac had a long history of not sufficiently addressing OTS examiner findings. OTS did not issue any enforcement action, either informal or formal, until June 2008. In short, earlier enforcement action was warranted.

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Our material loss review of IndyMac is the second such review we have performed of an OTS-regulated financial institution during the current financial crisis. In our first material loss review, of NetBank, FSB, we were critical of OTS for not taking stronger action when problems noted by examiners remained uncorrected through several examination cycles. We were also critical of OTS for delaying formal enforcement action after it had downgraded the thrift to a 3 in 2006. With IndyMac, OTS examiners reacted even slower in addressing issues that were more severe and with an institution that was nearly 10 times the size. IndyMac engaged in very high-risk activities over many years, yet OTS's examiners did not downgrade the thrift from its 2 rating until early 2008 (except for a brief downgrade in 2001), and only after IndyMac started to incur substantial losses from the risky, non-conforming loan products it could no longer sell on the secondary market. It is important to note that IndyMac did not even appear on OTS's problem thrift list provided to our office including the June 2008 list provided to us less than a month before the thrift was closed.

We believe that it is essential that OTS senior leadership reflect carefully on the supervision that was exercised over IndyMac and ensure that the correct lessons are taken away from this failure. In this regard, we recommend that the Director of OTS (1) ensure that action is taken on the lessons learned and recommendations from the OTS internal review of the IndyMac failure and (2) caution examiners that assigning composite CAMELS ratings of 1 or 2 to thrifts with high-risk, aggressive growth business strategies need to be supported with compelling, verified mitigating factors (such as thrift corporate governance, and risk management and underwriting controls) that are likely to be sustainable. OTS should examine and refine its guidance as appropriate.

OTS Management Response

In its management response, OTS agreed with our overall findings and recommendations and outlined a number of actions to address the identified shortcomings. OTS management also stated that the agency is committed to improve and strengthen its processes based on the lessons learned from the failure of IndyMac.

Among the actions planned by OTS is establishing a large savings association unit in Washington, DC, that will be responsible for reviewing and concurring with regional office actions for savings associations with total assets above $10 billion. To ensure consistent, timely, and appropriate initiation and resolution of corrective actions, OTS stated that it plans to implement newly developed, uniform standards for review and approval of enforcement actions by its existing Regional Office Enforcement Review Committees.

OTS also provided a chronological list of actions it is taking or plans to take to strengthen its supervisory process. These actions are more fully described in the agency's response to this report, see appendix 7.

Additionally, OTS stated that it plans to issue during the first quarter of 2009 (1) external guidance to thrifts on the appropriate documentation, notification, and Thrift Financial Reporting requirements for capital contributions and (2) internal guidance to re-emphasize to examiners the importance of problem correction which will highlight existing requirements for using OTS examination systems to document corrective actions and supervisory follow-up. During the second quarter of 2009, OTS plans to work with the other federal bank regulatory agencies to revise and reissue interagency guidance to address liquidity monitoring.

With respect to our first recommendation, OTS stated that it is dedicated to enact the recommendations in the lessons learned review and has developed or is developing revised policy guidance to address each one. It will also continue to monitor examination activity to ensure that staff members implement, and the industry complies, with the revised guidance. With respect to the second recommendation regarding composite ratings of thrifts with high-risk, aggressive growth business, OTS states that the enhancements described in its response combined with OTS guidance on assigning ratings and the lessons learned in the current financial crisis should ensure that assigned ratings are appropriate for each financial institution.

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The full text of the OTS management response is included as appendix 7.

OIG Comment

OTS identified a number of significant actions that if implemented as described should improve the timeliness and quality of its supervisory response to thrift high risk activities, particularly those by the largest thrifts. It will, however, take time to assess the effectiveness of these actions and continuous senior management attention will be crucial to their success.

Causes of IndyMac's Failure

High Risk Business Strategy and Aggressive Growth

From the time IndyMac Bank transformed from a real estate investment trust into a savings and loan association in July 2000, IndyMac embarked on a path of aggressive growth. From mid-2000 to the first quarter of 2008, IndyMac's assets grew from nearly $5 billion to over $30 billion. Growth resulted from the business strategy of the thrift's Chief Executive Officer (CEO) and board of directors, which was to originate or buy loans and sell them in the secondary market. Chart 1 below shows the thrift's growth in assets during this period.

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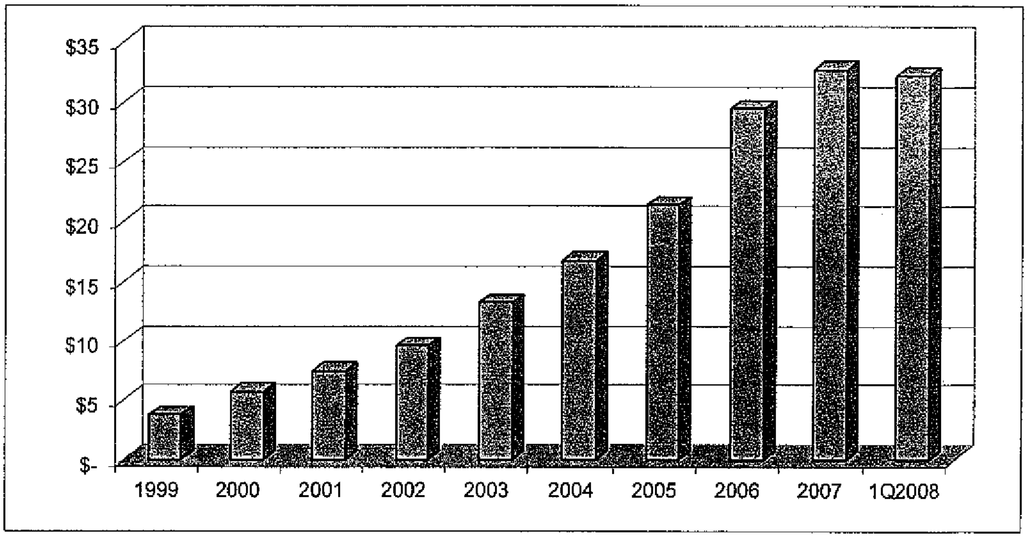
Chart 1. IndyMac's Growth in Assets Since Inception (in billions)



Source: IndyMac SEC Filings

As its primary business, IndyMac originated loans or bought loans from others, including from mortgage origination brokers, then it packaged them together in securities and sold them on the secondary market to other banks, thrifts, or Wall Street investment banks. IndyMac maintained mortgage servicing rights for the loans it sold. These loans were held in IndyMac's held for sale portfolio during the time they were packaged until they were sold to investors.

Chart 2 below shows the loan production for IndyMac from inception through 2008, during which time it generated about $10 billion in loans in 2000 to a high of $90 billion in 2006.

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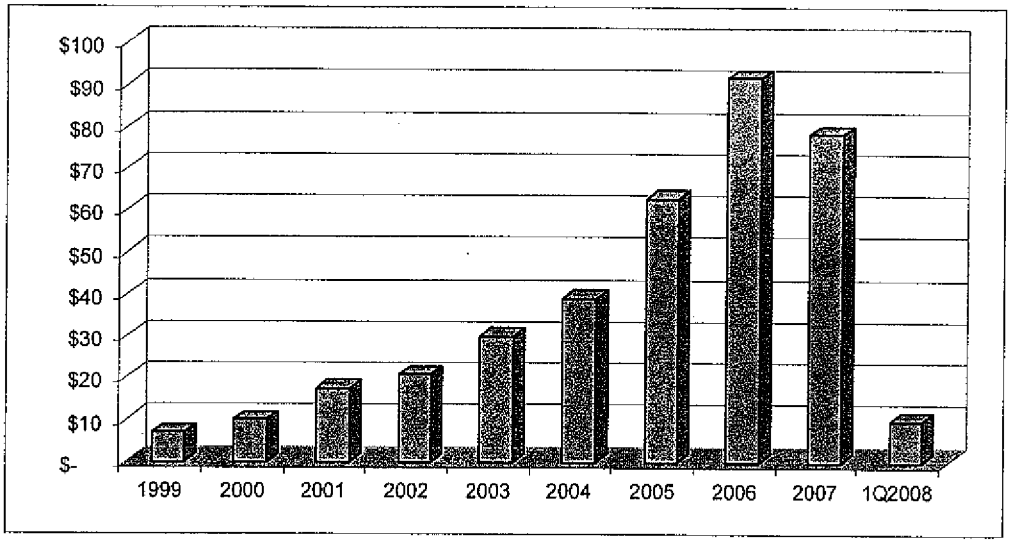
Chart 2 IndyMac's Loan Production by Year (in billions)



Source: IndyMac 10-K and 10-Q reports

IndyMac offered an extensive array of nontraditional mortgage loan products. With these products, it could qualify a wide range of borrowers for a loan. Many of these nontraditional mortgages, however, came with an increased risk of borrower default. For example, IndyMac offered an option ARM where the required minimum payment would not fully cover the monthly interest. This could result in negative amortization of the principal balance if the borrower paid less than the fully amortizing payment. According to an Indymac official, in 2006, 75 percent of borrowers who took the option ARM were only making the minimum payment.

ARMs comprised nearly 3 of every 4 loans that IndyMac made during the years 2004 through 2006. IndyMac benefited from these loans because of the larger profit that could be made on these products. For example, in 2006, the profit on an ARM was 3 percent compared to 0.9 percent on conforming loans sold to Government Sponsored Enterprises (GSE). By mid-2007, however, the profit on option ARMs and subprime loans had dropped to zero.

These loans proved to be even riskier because for the most part they were originated with less than full documentation. For a "stated income" loan, for example, IndyMac did not require

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borrowers to provide documentation to support the income on the application.[1]

By May 2005, signs of borrower distress were evident. There was an increase in the demand for interest only loans, and an increasing number of borrowers were only making the minimum payments on option ARMs. At the same time, house prices in California were leveling off.

When the secondary market for loans collapsed in late 2007, IndyMac could no longer sell its non-conforming mortgage loans. Therefore, the thrift's $10.7 billion in loans "held for sale" in its warehouse were transferred to loans "held to maturity." These loans remained in the thrift's warehouse because there were no bids, no market, and the discount was unknown. By May 2008 non-conforming mortgage loans had grown to $11.2 billion and IndyMac's own data showed that 12.2 percent of these loans were 90 days or greater in delinquency.

Lack of Core Deposits

With only 33 retail branch locations (less than average for a financial institution of IndyMac's size), IndyMac had limited access to retail deposits. As a result, IndyMac came to depend on more costly FHLB borrowing (advances) and brokered deposits for funds.

As of September 2006, IndyMac had over $9 billion in outstanding FHLB advances. IndyMac also borrowed, though to a much lesser extent, from the Federal Reserve and a German bank. An FDIC examiner commented in examination workpapers that IndyMac's FHLB advances represented 34 percent of total assets, high in comparison to other similar size institutions. This examiner also wrote that IndyMac should be monitored closely. OTS's examiner responded that these were "eye-opening stats." In March 2008, FHLB advances remained high, at 32 percent of total assets.

[1] In some instances, borrowers provided some written documentation to support listed assets. In other instances, IndyMac performed a reasonableness test by comparing the borrower's employment position and income to information on websites such as salarys.com. There were other instances where IndyMac employees noted in the loan files that they had verbally verified the borrower's employment.

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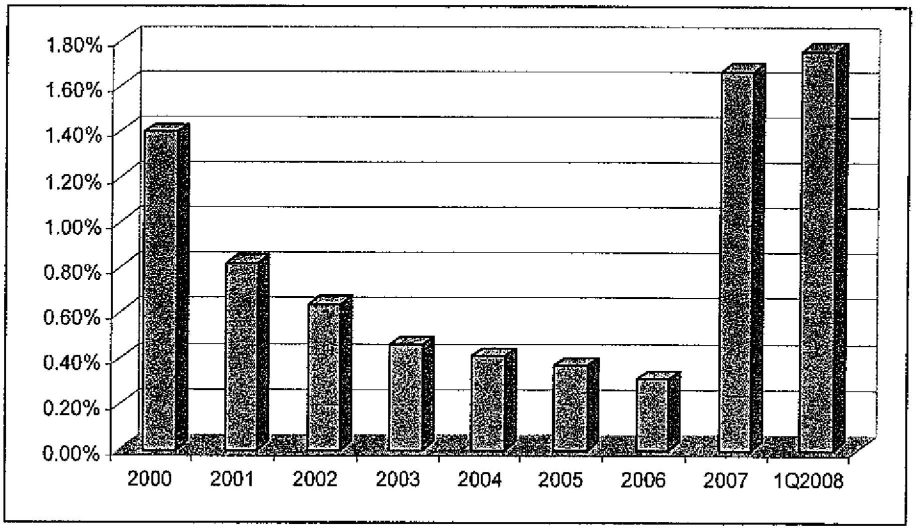
IndyMac increased its use of brokered deposits beginning in August 2007, when the market for the thrift's loans collapsed. During the period August 2007 through March 2008, brokered deposits increased from about $1.5 billion to $6.9 billion.

Inadequate Loss Reserves

OTS, consistent with generally accepted accounting principles, requires thrifts to set aside an adequate Allowance for Loan and Lease Losses (ALLL) for probable loan losses resulting from delinquencies. As early as 2004, IndyMac senior management began observing the probability of a downward trend in real estate values, which could reduce the collateral supporting loans and result in possible loan losses. Regardless, IndyMac's ALLL decreased as a percentage of the thrift's total loans until 2007 when it finally increased its ALLL because it began to experience losses in its loan portfolio. This is shown in chart 3 below.

Chart 3. IndyMac's ALLL as a Percentage of Total Loans



Source: FDIC statistics on depository institutions

During early 2008, IndyMac hired an independent public accountant (IPA) to review the ALLL compliance methodology. The IPA found weaknesses with the thrift's ALLL policy. Various business units were inconsistently calculating their own ALLL and senior management did not provide detailed guidance on how they

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expected the divisions to develop historical losses, look-back periods, and baseline factors.

The ALLL is critical because of its impact on the thrift's capital levels. Based on OTS policy, when the ALLL exceeds 1.25 percent of risk-weighted assets, it must be excluded from the equation that measures risk based capital levels. As of March 31, 2008, this amounted to a decline of 0.57 percent in total risk based capital for the thrift, which was already low at 10.26 percent (if the threshold would fall below 10 percent, IndyMac would not have been considered "well capitalized" for regulatory purposes).

Unsound Underwriting Practices

IndyMac encouraged the use of nontraditional loans. IndyMac's underwriting guidelines provided flexibility in determining whether, or how, loan applicants' employment, income, and assets were documented or verified. The following procedures were used by the thrift:

- No doc: income, employment, and assets are not verified
- No income/no assets (NINA): income and assets are not verified; employment is verbally verified
- No ratio: no information about income is obtained; employment is verbally verified; assets are verified
- Stated income: income documentation is waived, employment is verbally verified, and assets are verified
- Fast forward: income documentation is sometimes waived, employment is verbally verified, and assets may or may not be verified

To explore the impact of thrift underwriting on loan performance, we reviewed 22 delinquent loans that represented a cross-section of the loan products in IndyMac's loans held to maturity portfolio. These loans were 90 days or more delinquent as of August 31, 2008. We reviewed the loan files and discussed the loans with IndyMac officials who were retained by FDIC in the conservatorship.

For the loans reviewed, we found little, if any, review of borrower qualifications, including income, assets, and employment. We also

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found weaknesses with property appraisals obtained to support the collateral on the loans. For example, among other things, we noted instances where IndyMac officials accepted appraisals that were not in compliance with the Uniform Standard of Professional Appraisal Practice (USPAP). We also found instances where IndyMac obtained multiple appraisals on a property that had vastly different values. There was no evidence to support, or explain why different values were determined. In other instances, IndyMac allowed the borrowers to select the appraiser. As illustrative of these problems, the file for one 80/20, $1.5 million loan we reviewed contained several appraisals with values ranging between $639,000 and $1.5 million. There was no support to show why the higher value appraisal was the appropriate one to use for approving the loan.

We have included more detailed descriptions of four loans we reviewed in appendix 6, which illustrate examples of some of the weakest underwriting practices.

Impact of Senator Schumer's Letter on the Thrift

In an interview, OTS's Deputy Director, Examinations, Supervision and Consumer Protection, stated that IndyMac was a distressed institution with a high probability of failure, but the immediate cause of IndyMac's failure was a liquidity crisis resulting from deposit outflows of $1.55 billion (the deposit outflows occurred following the public release of a June 26, 2008, letter from Senator Charles Schumer). The Senator's letter described problems with the thrift that the regulators needed to be aware of and take actions to correct. The letter suggested the thrift was on the verge of failure.

According to the West Region Director, there were investors who were interested in investing in IndyMac around this time. However, he told us that this interest waned after the Senator's letter was published precipitating depositor withdrawals. The OTS official cited one investment firm in particular that had discussed with IndyMac's CEO the possibility of investing about $1 billion in the thrift. In our review of OTS e-mails related to its supervision of IndyMac, we found a June 18, 2008, e-mail from IndyMac's CEO to the West Region Director, the West Region Assistant Director,

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and the examiner-in-charge for IndyMac which stated that the investment firm was very impressed with IndyMac's team and was interested in investing in the thrift. The e-mail further stated the firm had completed on-site due diligence with IndyMac's management team regarding the thrift's balance sheet, off-balance sheet, and business model prospects.

This is inconsistent with another e-mail we read from IndyMac's CEO dated May 21, 2008, to OTS's West Region Director, Assistant Director, and examiner-in-charge, that he thought that firms contemplating investing in IndyMac would need assurances from OTS and FDIC about what regulatory actions were being considered and the possible impact on the thrift.

With this information, we interviewed the managing principal of the investment firm to determine the firm's level of interest in investing in IndyMac. The managing principal said that the firm had explored investing in IndyMac, as part of its normal business process, but never reached a point of serious interest. Also, the principal clarified that the firm based its decision not to invest on its own analysis of IndyMac. Contrary to what OTS's West Region Director told us, the principal said that Senator Schumer's letter did not affect the firm's investment decision.

Furthermore, an analysis performed by FDIC identified the liquidity problem at IndyMac months before the letter came to light. Specifically, in a March 2008 liquidity analysis FDIC identified the need for an investment of $2 billion to $3.5 billion to keep the thrift from failing. Another FDIC analysis, prepared in April 2008, showed that IndyMac was at a high risk of being downgraded to "less than well capitalized." In that analysis FDIC described IndyMac's dependence on brokered deposits to pay off FHLB advances and increase liquidity (brokered deposits at that time totaled nearly $6.9 billion). The analysis also noted that while IndyMac had approximately $3.5 billion in its lines of credit with the FHLB and Federal Reserve, it also had $12 billion in certificates of deposits that would mature within 6 months and be subject to withdrawal.

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OTS's Supervision of IndyMac

OTS's supervision of IndyMac failed to prevent a material loss to the Deposit Insurance Fund. Though OTS conducted regular examinations of the thrift, OTS examiners did not identify or sufficiently address the core weaknesses that ultimately caused the thrift to fail until it was too late -- causes such as aggressive growth without sufficient controls, poor loan underwriting, and reliance on volatile funding sources and FHLB advances. Even when examiners identified problems, OTS did not always report these to the thrift in the Reports of Examination (ROE).

In fact, from 2001 to 2007 OTS's composite CAMELS ratings of IndyMac consistently remained at 2.[2] It was not until 2008 that it dropped IndyMac's composite CAMELS rating to a 3 and then to a 5. According to OTS guidance, one of the principal objectives of the CAMELS rating process is to identify those institutions that pose a risk of failure and merit more than normal supervisory attention.[3] Furthermore, the CAMELS rating is to be a qualitative assessment based on a careful evaluation of component ratings, which evaluate, among other things, whether capital is adequate in relation to the risk profile and operations; asset quality reflects the extent of credit risk associated with the loan and investment portfolios; management has established appropriate policies, procedures, and practices regarding acceptable risk exposures; and the thrift's liquid assets are adequate. There were a number of concerns with IndyMac's capital levels, asset quality, management, and liquidity over the years. Had OTS taken these issues into account, we find it hard to understand how OTS consistently arrived at a satisfactory CAMELS composite rating of 2.

Furthermore, while OTS did report some MRBAs and other matters needing corrective action to the thrift in ROEs, it accepted assurances from IndyMac management that problems would be resolved. This was in spite of the fact that IndyMac management had a history of not taking corrective actions which OTS examiners recommended to improve the thrift. It should also be noted that

[2] In April 2001, OTS and FDIC performed an onsite review of IndyMac and 4 months later downgraded its original CAMELS composite rating of 2 to a 3. By the following year, the rating was elevated back to a 2.
[3] OTS, Examination Handbook, Section 070.6, November 2004.

OTS waited until June 2008 to issue it first informal enforcement action against IndyMac, and until July 2008 to present its first formal enforcement action against the thrift (the same month the thrift was closed; the action was not executed).

When we asked OTS's West Region officials and examiners about their supervisory efforts, they believed their supervision was adequate. We disagree. The West Region Director, as well as the examiners, believed that the collapse of both the real estate market and the secondary market for mortgage backed securities were responsible for the failure of the thrift. OTS regional officials also attributed the failure to a liquidity crisis brought on by a letter from Senator Schumer questioning the financial health of the thrift. While these were factors, we believe IndyMac's business strategy of aggressive growth and high-risk products was fundamentally flawed. Also, the thrift was already on a course for probable failure by the time Senator Schumer's letter was made public.

OTS Conducted Regular and Timely Examinations but Did Not Always Address Key Areas of the Thrift

OTS conducted a full scope examination each year from 2001 through 2008. These examinations were staffed with between 12 to 40 examiners. Despite the regularity of the examinations and the resources OTS devoted to them, OTS did not always assess certain operational programs. For example, because OTS believed the thrift was operationally safe and sound, it did not annually review things like controls to manage aggressive growth or loan underwriting.

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Also indicative of OTS's supervisory weaknesses, we found that OTS took PCA on July 1, 2008, following classification of IndyMac from well capitalized to adequately capitalized on June 30. This is in conformance with PCA requirements. However, it should be noted that a separate review by our office found that OTS allowed IndyMac to record an $18 million capital infusion from the holding company, received in May 2008, as though it was available on March 31, 2008. This allowed IndyMac to inappropriately report that it was at the well capitalized level as of March 31. A separate review of this issue is ongoing. Additionally, we believe that OTS should have taken PCA in May 2008 based on information in IndyMac's 10-Q filing for the quarter ending March 31, 2008.

Table 1 below summarizes the results of OTS's safety and soundness examinations of IndyMac.

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Table 1 Summary of OTS IndyMac Examinations and Enforcement Actions

		Safety and Soundness Examination Results			
Date started	Assets (in millions)	CAMELS rating	Number of matters requiring board attention	Number of corrective actions	Enforcement actions
4/16/2001	$5,732	2/233222	2	19	None
8/24/2001	$7,425	3/233222	N/A	Offsite Downgrade	N/A
7/29/2002	$7,112	2/232222	1	19	None
9/29/2003	$10,611	2/222223	5	12	None
11/15/2004	$15,005	2/222223	1	8	None
11/1/2005	$18,274	2/222222	7	8	None
1/8/2007	$26,501	2/222222	3	7	None
1/7/2008	$31,293	5/454554	10	24	• OTS and IndyMac enter into an MOU effective June 20, 2008 • On July 1, 2008, OTS designates IndyMac in troubled condition • On July 1, 2008 letter, OTS directs IndyMac to revise its business plan and establish a reverse mortgage concentration limit. OTS also downgrades IndyMac's capital level to "adequately capitalized"

Source: OIG Analysis of OTS data.

Notes: (1) At August 24, 2001, OTS and FDIC examiners jointly determined the composite rating to ensure it reflected IndyMac's overall risk profile.

(2) On January 17, 2008, based on interim findings of the examination started on January 7, 2008, OTS downgraded IndyMac's ratings to 3/242422, effective as of December 31, 2007.

Table 2 below shows the number of staff assigned to each examination from 2003 to 2008 and the number of hours charged to the assignment.

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Table 2. Number of OTS Staff and Hours Spent on IndyMac Examinations

Examination Start Date	Number of Staff Assigned	Number of Hours
9/29/2003	18	2,264
11/15/2004	19	2,431
8/22/2005	7	372
11/7/2005	26	3,224
1/8/2007	40	4,614
1/7/2008	37	6,383
6/2/2008	12	1,118

Source: OTS Examination System

Notes: (1) The August 22, 2005, examination was a field visit to check progress on prior exam findings and gather information for the next full scope examination.

(2) The June 2, 2008, examination was a targeted examination to identify risks to capital. The purpose was to determine the amount of capital needed to cover credit losses, provide for operations until a new business model could be implemented, and maintain capital levels at well capitalized. This exam was not completed before IndyMac was closed.

The sections that follow discuss our findings with OTS's review of the use of nontraditional loan products, underwriting of loans, and the lack of forceful enforcement action.

Concerns About Nontraditional Loans

OTS identified a number of concerns over the years related to IndyMac's use of nontraditional loans. Several of these concerns affected the thrift's capital requirements – things like IndyMac's narrow definition of subprime loans, the impact of negative amortization associated with the thrift's nontraditional loans, and the thrift's failure to monitor its option ARM portfolio. Yet, in response to all of these concerns, OTS did not take forceful action.

Subprime Loans Were Narrowly Defined

OTS expressed concerns in the 2001 through 2005 ROEs about IndyMac's narrow definition of subprime loans, but only required the expansion of the definition after 2003. In its 2003 ROE, OTS reported that IndyMac had not changed its guidelines and expressed concern because IndyMac's subprime definition did not require the thrift to maintain a sufficient level of capital. In its 2004

ROE, however, OTS agreed to simplify matters for IndyMac, and gave the thrift permission to use its narrow definition of subprime loans. Had OTS taken action, the thrift would have had to maintain more capital. In 2007, although the thrift's operation had not changed and the real estate market was collapsing, OTS not only did not require the thrift to take action, but no longer even expressed concern about the issue.

This was very surprising to us because in the beginning of 2007 IndyMac's own CEO expressed concerns about the thrift's subprime portfolio in an e-mail message to his executives that discussed the secondary market disruption. His message stated that IndyMac needed to get ahead of the secondary market and trade as much as they could as fast as they could in small deal sizes. In this message, the CEO detailed liquidity problems in the subprime market and the thrift's efforts to pare back risk. Specifically, the CEO stated that the thrift's financial condition was suffering from the effects of its subprime loans and was in the process of structuring a transaction to sell approximately $1.1 billion of them. He went on to say that Wall Street had "pulled financing from investors." He said that the thrift also needed to revisit product guidelines in the high risk areas such as subprime, fully financed mortgages as well as the thrift's higher loan-to-value (LTV) products and make those products "considerably more conservative."[4]

Nonetheless, in its 2007 ROE, OTS said that IndyMac's subprime lending was within the thrift's policy and OTS guidelines. Despite this, the examination workpapers indicated that the OTS examiner was not totally comfortable with IndyMac's compliance with guidance, although he stated in the workpapers that he was satisfied with IndyMac's efforts and would work with the thrift to ensure compliance. These nontraditional loan products, which included ARMs, were being offered to subprime borrowers. The OTS examiner recommended in his workpapers that IndyMac monitor the competition to ensure its underwriting guidelines were not so loose as to pick up the "leftovers" after other institutions tightened standards.

[4] We obtained the CEO's e-mail from OTS. The West Region Director had forwarded it to West Region staff and several of the OTS examiners for IndyMac.

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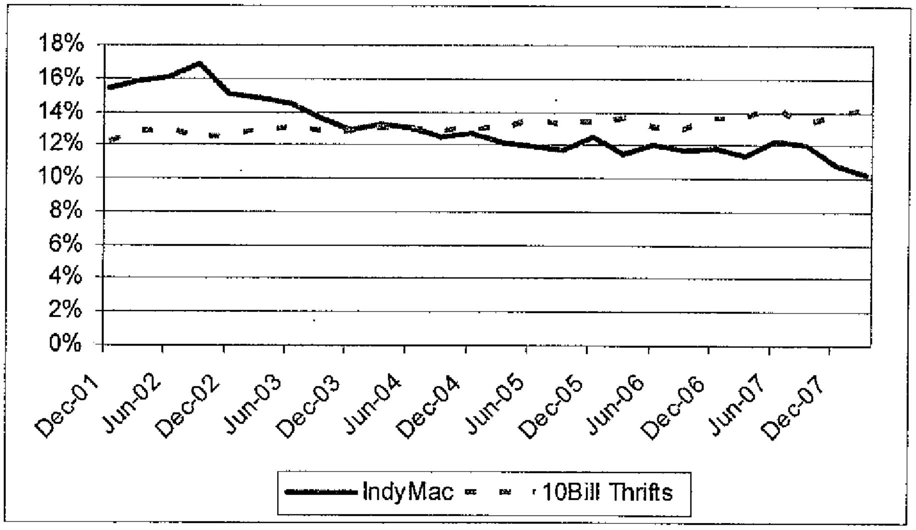
Impact of Negative Amortization

In its 2005 ROE, OTS did not show concern for IndyMac's use of option ARM and interest only loans because losses were minimal and capital was satisfactory. However, OTS stated that capital ratios continued to move lower because of significant asset growth, including growth in these high-risk loans, and were below the thrift's peers as we illustrate in Chart 4 below. OTS highlighted the risks associated with negative amortization that existed in IndyMac's nontraditional mortgage loan portfolio. IndyMac's total risk based capital, however, continued to decline, yet OTS took no action.

Chart 4. Total Risk Based Capital for IndyMac and Thrifts with Over $10 billion in Assets



Source: OIG analysis of FDIC Statistics on Depository Institutions

Monitoring of Option ARMs

In examiner workpapers supporting OTS's 2008 examination, we found the examiner expressed concern over the fact that IndyMac's option ARMs, many of which were now in the loans held to maturity portfolio, would soon reset to higher rates of interest. OTS stated that 34 percent of the loans as of December 31, 2007, exceeded 106 percent of their original loan values due to negative amortization and would soon approach 110 percent. In this workpaper, the examiner recommended that the thrift review reports that provided IndyMac management with a means for monitoring these loans. In the response attached to this finding, IndyMac provided copies of various reports it used to monitor performance of its option ARMs. The thrift asked OTS to provide examples of best practices report templates to implement this recommendation. We did not find that OTS reported this finding in the ROE or that the thrift took corrective action.

OTS Did Not Require Correction of IndyMac's Poor Loan Underwriting

IndyMac's business model was to produce as many loans as possible and sell them in the secondary market. To facilitate this level of production, we found that IndyMac often did not perform adequate underwriting. OTS, however, did not require IndyMac to make improvements in underwriting until late 2007. By then, it was too late. The information that follows are underwriting concerns we identified in several significant areas of the thrift's operations. We obtained this information by reviewing OTS, FDIC, and thrift documentation and interviewing OTS, FDIC and thrift employees.

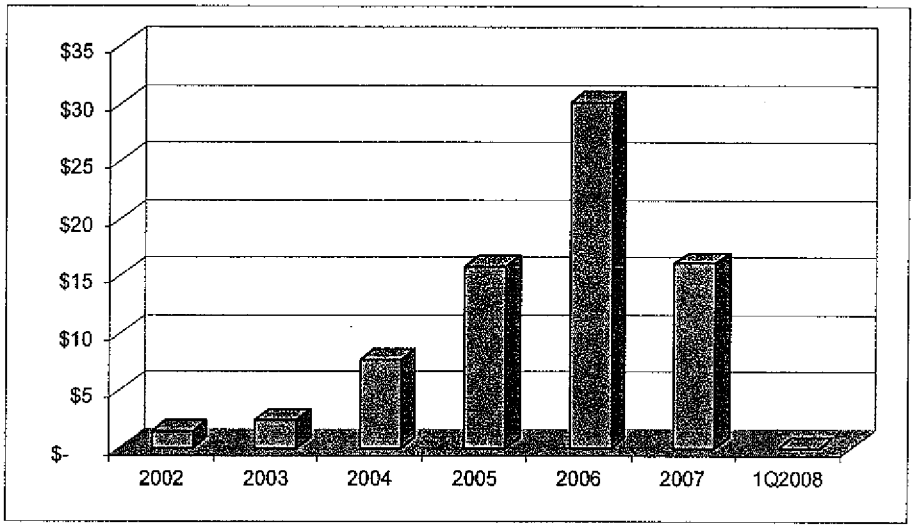
IndyMac's Conduit Division Engaged in Risky Practices for Years Before OTS Identified Concerns

To increase loan production, IndyMac relied heavily on outside mortgage brokers to originate loans. This became such a large part of IndyMac's operations that a separate unit, the Conduit Division, was set up to purchase loans in bulk from other loan originators. IndyMac sold these loans to investors in the secondary market. We found that many of IndyMac's problem loans were purchased through this division. In February 2007, IndyMac management, based on its analysis of the thrift's fourth quarter 2006 position, identified the need to better manage credit risk in the Conduit Division by implementing tighter seller approval and underwriting standards. IndyMac ultimately closed the division in August 2007.

Using brokers to develop a community presence, attract customers, and underwrite loans, through the Conduit Division, allowed the thrift to grow rapidly and required only a minimal capital investment. The Conduit Division grew tremendously from

2002 through 2006, reporting production in 2006 of $31 billion. Chart 5 below shows the loan growth of the Conduit Division from 2002 through 2007.

Chart 5. Loan Growth in the Conduit Division from 2002 through 2007 (in billions)



Source: Indymac's Security and Exchange Commission Filings
Note: IndyMac's Conduit Division was closed in August 2007.

We found that the thrift's internal audit group reported problems with the Conduit Division as early as 2005. Specifically, because of concerns the group had in the division's loan approval and underwriting process, it recommended that the division increase investment in infrastructure and personnel.

Furthermore, in 2006, IndyMac's independent auditor reported the Conduit Division as a financial reporting control deficiency. The independent auditor reported that the division did not have an effective process or system in place to oversee the execution of its trading activities or for monitoring the exposure to sellers which increased credit risk. Similar to IndyMac's internal audit group, the independent auditor recommended that the division strengthen controls to ensure that adequate trading authority is obtained for pool purchases and wire transfer approvals, controls surrounding the trade reconciliation be strengthened, and controls be added for the description of loan pool population between initial purchase by IndyMac and final settlement dates.

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Despite the concerns raised by the thrift's internal and independent auditors as well as the Conduit Division's rapid growth, OTS did not examine the division until 2007. When OTS finally did review the division, it found major weaknesses. OTS made six recommendations to IndyMac to improve the safety and soundness of its Conduit Division. Shortly after, IndyMac recognized losses were occurring from this division and closed it.

An OTS examiner we talked to about the Conduit Division loans was concerned that OTS was assigning a CAMELS component 2 rating for asset quality and thought it should have been a 3. He was concerned about the underwriting of loans in the division but expressed some regret that he did not perform a more thorough examination of Conduit Division loans. Another examiner had similar concerns and stated that that the Conduit Division did not underwrite loans, and that IndyMac was not properly reviewing the stated income loans purchased from brokers and was not monitoring delinquency rates of these loans. However, OTS's examiner-in-charge told us that he was confident that the risk was manageable and thought the higher rating was appropriate.

OTS Was Unaware of Underwriting Problems in IndyMac's Home Construction Lending Division Until 2007

In our review of delinquent and troubled loans originated by IndyMac, we found that its Home Construction Lending (HCL) Division was responsible for many of them. Among other things, the HCL Division made home construction loans. It also originated speculative loans and made loans for land purchases. As of December 31, 2007, the HCL Division's loan portfolio was about $2.3 billion or 11 percent of IndyMac's entire loan portfolio.

It was not until its 2007 ROE that OTS reported concerns in the underwriting standards of the HCL Division construction-to-permanent loan portfolio. Among other things, the examiners could not verify that management had determined that sufficient funds existed to complete projects. Overall, the examiners noted a number of findings related to the HCL Division portfolio. It is interesting to note that one of the OTS examiners stated in an e-mail to another examiner, with regard to the HCL Division, that the "appreciation in the market during the last 4 to 5 years was a

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wonderful deodorant to any sloppy or loose underwriting or fund control processes."

Except for some problems with the underwriters' documentation of appraisals in 2004, prior to 2007 OTS examinations had not expressed any significant concerns with regard to IndyMac's HCL Division.

Having said that, IndyMac was aware of potential problems with the HCL Division and in 2004 conducted its own review of the division. IndyMac's internal review found several problems, including (1) a $517,000 bridge loan for which an appraisal was not obtained to support collateral value, (2) loans with expired insurance policies, (3) 22 loans that did not have evidence of building permits in file, (4) 122 title endorsements checks for new liens or delinquent taxes recorded against property that could affect IndyMac's lien position, and (5) money provided to borrowers for 18 loans did not have supporting documentation for these amounts as required with such documents as invoices or contracts.

We interviewed OTS's examiner-in-charge on the 2005 examination and asked him about OTS's review of HCL. He stated that the HCL division was much smaller at the time, was not a major problem, and he could not recall specifics about the examination. In OTS's 2005 ROE we found no discussion of these issues above.

OTS Identified Problems With IndyMac Appraisals in 2001 But Failed to Ensure the Problems Were Corrected

OTS identified problems with IndyMac appraisals early on. In its 2001 examination, OTS found that appraisals for the Home Builders Division (HBD) (1) violated policies and procedures, (2) violated OTS and Uniform Standards of Professional Appraisal Practice, (3) used inflated appraised values, (4) lacked market analysis and feasibility studies to support appraised value, (5) valued properties far in excess of the recent sale prices for the subject properties and (6) used retail values for subdivisions instead of prospective market value at the time of completion.

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OTS, however, did not report these issues in the ROE. Instead, the examination workpapers noted that OTS verbally explained the problems with IndyMac officials and prepared written findings memoranda addressed to the thrift's Chief Credit Officer and Chief Commercial Appraiser. In a limited examination later in the year, OTS followed up on the appraisal issues and concluded that additional attention was needed. However, while the appraisals did not meet standards, OTS concluded that existing appraisals and underwriting were sufficient to mitigate risk and did not issue an MBRA or other corrective action. The basis for OTS's conclusion was not clear.

In its 2002 ROE, OTS examiners stated that IndyMac had hired a new chief commercial appraiser who reviewed loan appraisals. OTS examiners also stated that he was cooperative in working with the OTS to revise policies, discuss appraisal methodology and techniques, and work on acceptable resolutions of appraisal issues. However, OTS did not comment on his effectiveness.

In its 2003 ROE, OTS reported that HBD appraisal policies, procedures, and practices were satisfactory and problem asset levels had declined. No specific comments were made about the efforts of the new chief commercial appraiser identified by OTS a year earlier. However, OTS reported concerns in the single family real estate appraisal function. OTS deemed this function satisfactory but said that improvements were needed.

In its 2004 ROE OTS reported that IndyMac had effective residential and commercial appraisal functions, but recommended corrective actions to enhance controls associated with residential appraisals. We could not locate the supporting workpaper documentation to determine what these actions were.

In its 2005 ROE, OTS did not report on IndyMac's appraisal function. We found that the examiner noted that in the prior year's examination, OTS recommended improvements in the appraisal review and oversight function, and that both the OTS appraiser and examiner reviewed for corrective actions and found the recommendation had been implemented satisfactorily. No further details were provided in the workpapers or the ROE.

In its 2007 ROE, OTS identified serious issues with IndyMac's appraisals. OTS found that the borrowers, rather than the mortgage originator, were paying the appraisers directly, which did not ensure appraiser independence. In several of the loan files, the OTS appraiser noted inadequate documentation. In the examiner workpapers, we noted that the examiner found appraisals where the property valuation was made without physical site inspection of the subject property or comparable properties, appraisals for which the appraiser was not located in the immediate area, appraisals where the valuations were based on public data sources, and appraisals in which no photos of the property or comparables were provided. Despite these serious weaknesses, OTS did not require action be taken.

In its 2008 examination of IndyMac, OTS found improvements in the appraisal function. OTS's ROE stated that to improve credit quality, management implemented more stringent underwriting guidelines, tightened appraisal standards, and re-focused quality control efforts to high risk areas. However, we did not find that OTS's examination workpapers supported these conclusions.

This was puzzling to us because in 2008 we found that IndyMac hired a firm to conduct an assessment of its appraisals. The primary finding of the firm, based on interviews with retail and wholesale underwriters, was that IndyMac underwriting was not centrally managed and instead was handled in remote branches and in IndyMac's Pasadena office. As a result, no consistency existed with appraisal underwriting. The firm recommended that policies and procedures be centralized and made consistent to ensure conformity to procedures. We did not see evidence of how OTS handled these findings and ensured IndyMac took the necessary corrective actions.

OTS Did Not Issue an Enforcement Action Until June 2008

When the thrift's business model was no longer viable, the thrift suffered enormous losses. These losses stemmed from single-family loans it held in its portfolio -- poorly underwritten, high-risk non-conforming loans.

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In January 17, 2008, based on interim findings of OTS's 2008 examination, OTS issued a letter to IndyMac's board of directors, chairman, and CEO that the bank's composite CAMELS rating was downgraded from a 2 to a 3, effective December 31, 2007. The Asset Quality and Earnings component ratings were adjusted from a 2 to a 4.

In accordance with OTS's own enforcement guidance, there is the presumption that formal enforcement action be taken for an institution with a composite rating of 3 for the latest safety and soundness examination, if conditions at the institution are rapidly deteriorating or uncertainty exists as to whether management and the board have the ability or willingness to take appropriate corrective action. The guidance also states that OTS may consider issuing an informal enforcement action for a 3 rated association with strong management and a generally positive assessment, if the institution takes immediate corrective actions to resolve the concerns.

In accordance with this guidance and especially since IndyMac's financial condition was rapidly deteriorating, OTS should have issued an enforcement action against IndyMac at the time it downgraded the composite CAMELS rating to a 3 in January 2008.

We believe that OTS should have taken enforcement action against IndyMac as early as 2005. In its 2005 ROE, OTS reported that IndyMac's capital ratios continued to move lower due to significant asset growth, including growth in higher risk asset categories. OTS was concerned with IndyMac's quarterly liquidity stress analysis. OTS also reported that IndyMac had several significant asset concentrations that warranted a higher level of capital in the current environment, such as nontraditional mortgage loans with negative amortization potential, Alt-A loans, and geographic concentration of loans in California and areas rated high-risk by several mortgage insurance companies. We found no evidence in the workpapers that enforcement action was considered.

In an April 2008 e-mail, OTS's examiner in charge for IndyMac contemplated enforcement action and raised it to the OTS's West Region Assistant Director. The examiner believed OTS officials should publicly disclose IndyMac's poor earnings position to

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prevent any liability to investors who had the potential to lose money should the institution fail. At the same time, the examiner was also concerned that if OTS were to take a formal enforcement action, which is public, it would signal a problem with the institution and impact IndyMac's ability to raise capital. The West Region Assistant Director responded to the examiner that OTS officials had a responsibility to take the appropriate enforcement actions and this decision should not be made with the concern that it is public. Nonetheless, OTS did not take enforcement action until June 2008, 2 months later. Examiners said they did not believe enforcement action should have been taken sooner.

Issued June 11, 2008 and effective June 20, 2008, OTS entered into a memorandum of understanding (MOU) which directed IndyMac management and the board to implement a capital restoration plan. The MOU also required IndyMac to (1) take steps necessary and appropriate to ensure that its capital is commensurate with its risk profile, (2) continue to refine and implement its plan to reduce problem assets to acceptable levels, (3) continue to act to ensure its funding is diversified and there are contingency plans in place to have necessary funds available for various stress scenarios, (4) execute plans for improving core earnings and return to profitability, (5) provide bank plans to OTS and report on the progress in meeting targets established in the plans, and (6) make or pay no dividends or other capital distributions without OTS approval. IndyMac's board was directed to ensure compliance with the plan.

On July 1, 2008, OTS issued a follow on supervisory directive to IndyMac's chairman and CEO stating that OTS had reviewed the thrift's capital restoration plan and was now directing the institution to (1) finalize the plan in 20 days, report progress on a monthly basis, implement the plan by closing retail and wholesale forward mortgage lending units and no longer accept new rate locks in those units; (2) establish concentration limits for reverse mortgage loans and in the interim, limit aggregate reverse mortgage loans, to the greater of the amount held at June 30, 2008, or 100 percent of tier 1 capital, and (3) continue to comply with the MOU. In the directive, OTS also reclassified IndyMac's capital level as adequately capitalized (from well capitalized) and informed the thrift that it was now subject to restrictions on brokered deposits.[5]

Also on July 1, 2008, OTS issued a Notice of Troubled Condition Designation to the board of directors and CEO that assigned the thrift a composite CAMELS rating of 5. The Notice placed additional restrictions on the thrift related to asset growth, changes in the board and management, golden parachutes, third party contracts, and capital distributions. On July 3, 2008, OTS presented to IndyMac management a cease and desist order, the first time OTS started the process to take a formal, public enforcement action against the thrift. However, OTS never executed the order and the thrift was closed 8 days later. The order would have required IndyMac to (1) retain tier 1 capital of 7 percent and total risk based capital of 13 percent at December 31, 2008; (2) accept no new loans in its retail and wholesale divisions; (3) within 20 days provide a business plan that returns the thrift to a safe and sound position; (4) execute a strategy that includes selling GSE reverse mortgages, retail banking operations, and mortgage servicing; (5) submit a liquidity plan; and (6) obtain approval from the Regional Director to issue dividends. The thrift was closed on July 11. We believe the formal enforcement action was too late.

OTS Should Have Taken Prompt Corrective Action Earlier

The purpose of PCA is to resolve the problems of insured depository institutions at the least possible long-term loss to the Deposit Insurance Fund.[6] PCA provides federal banking agencies with the authority to take certain actions when an institution's capital drops to certain levels. PCA also gives regulators flexibility to discipline institutions based on criteria other than capital to help reduce deposit insurance losses caused by unsafe and unsound practices.

As noted above, OTS implemented provisions under PCA through its supervisory directive dated July 1, 2008. This action was taken immediately after OTS issued its ROE on June 30, 2008,

[5] 12 CFR Section 337.6(b)(2)

[6] 12 USC § 1831o

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concluding IndyMac's capital level had declined from well capitalized to adequately capitalized.

We believe, however, that OTS should have taken PCA in May 2008 based on information in IndyMac's 10-Q filing for the quarter ending March 31, 2008. In that 10-Q, IndyMac reported that its total risk-based capital was 10.26 percent at the end of the quarter, which was above the 10 percent threshold for well capitalized. However, IndyMac included a disclosure that during April 2008, Moody's Investor Service and Standard & Poor's downgraded the thrift's ratings on a significant number of mortgage backed securities including certain of those issued by IndyMac and for which IndyMac retained interest. IndyMac also stated that had the downgraded ratings been applied to the balance sheet as of March 31, 2008, its total risk based capital would have been reduced to 9.27 percent, which is below the 10 percent well capitalized threshold. OTS, therefore, could have used this information to downgrade the thrift to the lower capital level and implemented PCA.[7]

OTS's Lessons Learned Review

OTS policy is to conduct an internal review after the failure of an institution by an OTS region other than the OTS region where the failure occurred. The purpose of the review is to examine causes of the thrift's failure, identify lessons learned for OTS staff, and provide recommendations based upon the review. While these reviews cannot be viewed as independent, we believe they are useful in providing OTS senior management additional insight into failures and needed supervisory improvement outside of and before the completion of material loss reviews by our office.

OTS initiated an internal failed bank review of IndyMac following its failure in July 2008. The scope of the review focused primarily on OTS's supervision from November 2005 until it failed. The review was completed in September 2008.

[7] 12 CFR Section 565.3(3)(c) provides for a savings association to be notified of its capital levels and its capital category as of the most recent date of an adjustment due to a material event that places the savings association in a lower capital category.

The review, discussed in a 41-page report, found that the immediate cause of IndyMac's failure was an inability to meet its obligations due to insufficient liquidity. The report stated that the public release of the June 26, 2008, letter from Senator Schumer to OTS and FDIC and the resultant media attention precipitated significant deposit withdrawals from IndyMac. The deposit withdrawals, which occurred at a time when all other sources of liquidity had been restricted or eliminated, caused a liquidity crisis and resulted in OTS closing the thrift on July 11, 2008.

The review also found that IndyMac was in a distressed financial condition. The secondary mortgage market collapse that occurred in 2007 forced IndyMac to discontinue its primary line of business and retain on its balance sheet a $10.7 billion portfolio of loans of declining credit quality. Also, the composition and geographic concentration of IndyMac's loan portfolio was vulnerable to the downturn in the California housing market.

Further, the review concluded that IndyMac's risk from its loan products, including option ARMs and stated income loans, was not sufficiently offset by other underwriting parameters, primarily higher FICO scores and lower LTV ratios.

The review identified several lessons learned for OTS as follows:

- Underwriting practices considered standard in the mortgage industry may become more lax over time due to competitive pressures. Regulators need to scrutinize these standards closely, especially for institutions with concentrations of loans originated under these standards.

- Loans held for sale are not assured of being sold on the secondary market. Institutions cannot presume investor demand will continue.

- Traditional sources of liquidity available under normal economic conditions may be severely curtailed for institutions experiencing a distressed financial condition. The FHLB and Federal Reserve Bank can restrict borrowing to troubled institutions. The FDIC may reject requests for

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brokered deposit waivers to institutions falling below well-capitalized status.

- Concentration risk mitigation practices are essential regardless of current economic conditions. High-risk activities and concentration risks can be concealed by financial success during favorable economic conditions.

- Documented and timely enforcement action is essential to ensure supervisory expectations are communicated to the board of directors.

The OTS Midwest Region staff provided the following recommendations to the West Region:

- West Region management should closely evaluate the need to limit institutions' capital exposure to purchases and sales of loans with high-risk characteristics.

- OTS should enhance examiner guidance for liquidity monitoring. Institutions must have contingency plans in place to reposition assets in the event liquidity safety nets are eliminated or limited by the FHLB and the Federal Reserve Bank.

- West Region management should consider issuing further policy guidance outlining examiner's procedures for documenting supervisory follow-up to examination findings. Documentation should be maintained on all follow-up efforts and conclusions regarding compliance.

OTS provided our office with an update on the status of these recommendations on February 17, 2009. In this regard, OTS stated that it issued or planned to issue revised guidance to cover each recommendation.

OTS's lessons learned review on IndyMac reported on many of the same significant problems that we identified. However, we believe the review put too much emphasis on liquidity and not enough on the unsafe and unsound practices and business model of the thrift. The review did not address the aggressive business strategy that placed loan production and growth ahead of underwriting controls. This strategy ultimately caused the thrift to make a large number of bad loans, resulting in credit losses that could not be overcome, particularly when the real estate and secondary markets collapsed in mid-2007 and loans had to be held to maturity. At this point, the thrift's capital position was put in jeopardy and, combined with its lack of retail deposits and reliance on brokered deposits and FHLB advances, caused a liquidity crisis. We believe that OTS should have done much more to ensure IndyMac tightened its loan underwriting early on when the thrift was establishing its business strategy.

Concluding Remarks and Recommendations

Our material loss review of IndyMac is the second such review we have performed of an OTS-regulated financial institution during the current financial crisis. In our first material loss review, of NetBank, FSB, we made 3 recommendations. Two of the recommendations related to an internal assessment of the NetBank failure and the need to strengthen the internal assessment process and ensure that action was taken on the recommendations and lessons-learned from the internal assessment. As the third recommendation, we recommended that OTS re-emphasize to examiners that for 3-rated thrifts, formal enforcement action is presumed warranted when certain circumstances identified in the OTS Examination Handbook are met. OTS concurred with the recommendation and provided responsive planned actions.[8]

With NetBank, we were critical of OTS for not taking stronger action when problems noted by examiners remained uncorrected through several examination cycles. We were also critical of OTS for delaying formal enforcement action after it had downgraded the thrift to a 3 in 2006. With IndyMac, OTS examiners reacted even slower in addressing issues that were more severe and with an institution that was nearly 10 times the size. IndyMac engaged in very high-risk activities over many years, yet OTS's examiners did not downgrade the thrift from its 2 rating until early 2008 (except for a brief downgrade in 2001), and only after IndyMac started to

[8] OIG, *Safety and Soundness: Material Loss Review of NetBank, FSB* (Report No. OIG-08-032; Apr. 23, 2008).

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incur substantial losses from the risky, nontraditional loan products it could no longer sell on the secondary market. Furthermore, IndyMac did not even appear on OTS's problem thrift list provided to our office, including the June 2008 list provided to us less than a month before the thrift was closed.

We believe that it is essential that OTS senior leadership reflect carefully on the supervision that was exercised over IndyMac and ensure that the correct lessons are taken away from this failure. In this regard, we recommend that the Director of OTS:

1. Ensure that action is taken on the lessons learned and recommendations from the OTS internal review of the IndyMac failure.

   Management Response

   OTS stated that it is dedicated to enacting the recommendations and has developed or is developing revised policy guidance to address each one. OTS also communicated the changes to staff and the thrift industry during training, staff meetings, and outreach throughout 2008 and 2009. OTS will continue to monitor examination activity to ensure that staff members implement, and the industry complies, with the revised guidance.

   OIG Comment

   OTS's actions, taken and planned, address the intent of this recommendation. As indicated in OTS's response, all planned actions are to be in place by the second quarter of 2009.

2. Caution examiners that assigning composite CAMELS ratings of 1 or 2 to thrifts with high-risk, aggressive growth business strategies need to be supported with compelling, verified mitigating factors. Such mitigating factors should consider things such as the institution's corporate governance, risk management controls, ALLL methodologies, concentration limits, funding sources, underwriting standards, and capital levels and whether the mitigating factors are likely to be sustainable in the long-term. Another important factor that

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should be considered is the extent the thrift offers nontraditional loan products (regardless of whether loans are sold or retained) that have not been stress tested in difficult financial environments, and whether the thrift can adequately manage the risks with such products. OTS should re-examine and refine as appropriate its guidance in this area.

Management Response

According to OTS, the OTS *Examination Handbook Section 070, Ratings: Developing, Assigning, and Presenting,* addresses the criteria under which an examiner should rate a financial institution. In this regard, examiners should base ratings on a careful evaluation of an institution's managerial, operational, financial, and compliance performance. The ratings should help identify associations that pose a risk of failure and merit more than normal supervisory attention. Additionally, senior managers routinely discuss the appropriateness of ratings based on examinations, off-site monitoring, and other supervisory activities. OTS is committed to ensuring that its examination ratings accurately reflect the condition of its regulated financial institutions.

OTS states that the enhancements described in its response combined with OTS guidance on assigning ratings and the lessons learned in the current financial crisis should ensure that assigned ratings are appropriate for each financial institution.

OIG Comment

As indicated in its response, OTS considers its current guidance to be adequate. OTS's commitment to ensure ratings are appropriate is noted. Collectively, the corrective actions described in its response have the potential to have major impact on its supervision of thrifts, including the assignment of ratings. However, it will take time to assess the effectiveness of these actions and continuous senior management attention will be crucial to their success.

* * * * *

We would like to extend our appreciation to OTS for the cooperation and courtesies extended to our staff during the audit. If you have any questions, please contact me at (617) 223-8640 or Sharon Torosian, Audit Manager, at (617) 223-8642. Major contributors to this report are listed in appendix 8.

Donald P. Benson
Audit Director

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We conducted this material loss review of IndyMac Bank, FSB (IndyMac) in response to our mandate under section 38(k) of the Federal Deposit Insurance Act, as amended.[9] This section provides that if a Deposit Insurance Fund incurs a material loss with respect to an insured depository institution, the inspector general for the appropriate federal banking agency is to prepare a report to the agency, which shall

- ascertain why the institution's problems resulted in a material loss to the insurance fund,
- review the agency's supervision of the institution, and
- make recommendations for preventing any such loss in the future.
- assess implementation of prompt corrective action (PCA) provisions of section 38.

Section 38(k) defines a loss as material if it exceeds the greater of $25 million or 2 percent of the institution's total assets. The law also requires the inspector general to complete the report within 6 months after it becomes apparent that a material loss has been incurred.

We initiated a material loss review of IndyMac based on the loss estimate by the Federal Deposit Insurance Corporation (FDIC). As of December 31, 2008, FDIC's Deposit Insurance Fund had recorded an estimated loss of $10.7 billion.

To accomplish our review, we conducted fieldwork at the Office of Thrift Supervision (OTS) headquarters in Washington, DC and its regional office in Daly City, California. We also met with FDIC officials with its (1) supervisory office in San Francisco, California, and (2) Division of Resolutions and Receiverships on site at IndyMac headquarters in Pasadena, California. While in Pasadena we also interviewed and obtained documents from IndyMac employees.

[9] 12 USC § 1831o(g).

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To assess the adequacy of OTS's supervision of IndyMac, we performed interviews and reviews to determine (1) when OTS first identified safety and soundness problems at the thrift, (2) the gravity of the problems, and (3) OTS's supervisory response to get the thrift to correct the problems. We also performed interviews and reviews to determine whether OTS (1) might have discovered problems earlier; (2) identified and reported all the problems; and (3) issued comprehensive, timely, and effective enforcement actions that dealt with any unsafe or unsound activities. Specifically, we did the following:

- We reviewed OTS supervisory files and records for IndyMac from 2000, the year it was chartered by OTS, through 2008. We analyzed examination reports, supporting workpapers, and related supervisory and enforcement correspondence. We performed these analyses to gain an understanding of the problems identified, the approach and methodology OTS used to assess the thrift's condition, and the regulatory action used by OTS to compel thrift management to address any deficient conditions. In assessing OTS's supervisory actions with respect to IndyMac, we considered internal OTS guidance and legislation provided by the Federal Deposit Insurance Corporation Improvement Act, 12 USC § 1820(d).

- We interviewed and discussed various aspects of the supervision of IndyMac with OTS management officials and examiners to obtain their perspective on the thrift's condition and the scope of the examinations.

- We interviewed FDIC officials and examiners who were responsible for monitoring IndyMac for federal deposit insurance purposes, FDIC officials who were assigned to the thrifts operations to run the conservatorship, and FDIC Division of Resolutions and Receiverships personnel who were involved in the receivership process.

- We interviewed current or former officials and employees of IndyMac's Enterprise Risk Management group and internal audit regarding the thrift's operations.

- We selectively reviewed IndyMac documents that had been taken by FDIC and inventoried by FDIC Division of Resolutions and Receiverships personnel. The inventoried documents comprised over 500 boxes. We identified from FDIC's inventory list those documents for our review that were most likely to shed light on the reasons for the thrift's failure and OTS's supervision of the institution. We did not review each and every document in the 500 boxes.

- We judgmentally sampled 22 IndyMac loan files from a universe of delinquent loans in the thrift's held to maturity portfolio as of August 31, 2008. This universe included 63,935 loans totaling a little over $13 billion. The delinquency period for the loans was 90 or more days. Our sample included a cross-section of the thrift's loan products, such as adjustable rate mortgages, stated income loans, and subprime loans. The purpose of our review was to assess IndyMac's underwriting of these loans. We also discussed these loans with IndyMac officials who were still with the thrift after its take over by FDIC. We performed this review during our visits to IndyMac in September and November 2008. We conducted this review using IndyMac's computer system (MIPS), which contained pertinent loan information. The MIPS provided us with information such as the type of loan and the associated terms, borrower name, property location, interest rate, loan amount FICO scores and LTVs. Other information such as the broker, lender, and the debt-to-income ratio were not consistently found in MIPS. We were also able to review hard copy documentation loan files for 15 of the loans. For 7 of the loans, however, hard copy documentation had been sent to an offsite storage facility and was not available for our review.

We conducted our fieldwork from September 2008 through December 2008. We conducted this audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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IndyMac Bank, FSB, History

Since its inception, IndyMac Bank, FSB (IndyMac), and its predecessor entities focused on home mortgage lending. IndyMac Mortgage Holding, Inc. (IndyMac Mortgage), was established in 1985 as a real estate investment trust (REIT) by Countrywide Credit Industries. In 1993, IndyMac Mortgage transitioned its business model to become a mortgage lender. During the global liquidity crisis in late 1998, many non-regulated financial institutions, mortgage lenders, and mortgage REITs were adversely impacted or did not survive. In response to this, IndyMac Mortgage determined it would be advantageous to become a depository institution. This would provide significant advantages in the form of diversified financing sources, the retention of capital to support growth, and a strong platform for the origination of mortgages.

IndyMac Mortgage terminated its status as a REIT on January 1, 2000, and converted to a fully taxable entity. On July 1, 2000, the entity acquired SGV Bancorp, Inc., which then was the parent of First Federal Saving and Loan Association of San Gabriel Valley, California, a federal savings association. The entity contributed substantially all of its assets and operations to the savings association and was renamed IndyMac Bank, FSB. IndyMac commenced operations on July 1, 2000, with $5.1 billion total assets. IndyMac operated as a wholly owned subsidiary of the publicly traded holding company, IndyMac Bancorp, Incorporated.

As a chartered thrift, IndyMac had access to deposits and Federal Home Loan Bank borrowings to strengthen and diversify its funding base. Consistent with its predecessor entities, the thrift originated residential loans for sale and securitization, as well as to hold for its investment portfolio. Residential mortgage lending and mortgage banking activity remained its primary focus.

On July 16, 2004, IndyMac entered the reverse mortgage industry through the acquisition of nearly 94 percent of the outstanding common stock of Financial Freedom Holdings, Inc., the leading provider of reverse mortgages in the United States, and the related assets from Lehman Brothers Bank, FSB, and its affiliates. The remaining shares of common stock were purchased from Financial Freedom's chief executive officer in July 2006.

From June 2005 to June 2007, IndyMac grew from $13 billion in total assets to over $31 billion. The growth was mainly due to the production pipeline consisting predominately of Alt-A loans. Starting in the third quarter of 2007, IndyMac was unable to sell or securitize its loan production. As a result, $10.7 billion of loans that it intended to sell remained on its own books in its held to maturity account. IndyMac recorded a $474 million adjustment in the fourth quarter of 2007 to cover estimated future losses associated with loans. At March 31, 2008, its loans held to maturity account totaled $1.4 billion, a 51.4 percent increase since 2007. The majority of loans recorded to this account were those that it was unable to sell or securitize.

On June 20, 2008, the Office of Thrift Supervision (OTS) completed a comprehensive examination of IndyMac and assigned a composite CAMELS rating of 5 to the institution. The composite rating reflected the significant deterioration of the thrift from the first quarter 2008 and the institution's viability was in question.

On June 26, 2008, Senator Charles Schumer publicly released a letter to the Federal Deposit Insurance Corporation (FDIC) and OTS outlining his concerns over IndyMac's viability and potential loss to the Deposit Insurance Fund. A deposit run on the thrift began on June 27, 2008, and continued through July 11, 2008, resulting in net withdrawals totaling $1.55 billion. On July 11, 2008 OTS placed IndyMac into receivership, formed a newly chartered thrift, and named the FDIC as conservator for the new thrift, called IndyMac Federal Bank, FSB. On Wednesday December 31, 2008, FDIC signed a letter of intent to sell the banking operations of IndyMac Federal Bank, FSB, to a thrift holding company controlled by IMB Management Holdings LP, a limited partnership.

Appendix 4 contains a chronology of significant events regarding IndyMac.

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Office of Thrift Supervision

Types of Examinations Conducted by OTS

As required by law, OTS conducts full-scope, on-site examinations of insured depository institutions with assets over $500 million, as in the case of IndyMac, once a year.[10] OTS also conducts limited examinations under certain conditions which focus on high-risk areas. In addition, OTS conducts information technology examinations to evaluate the institution's compliance with applicable rules and policies of the OTS.

OTS uses the CAMELS rating system to evaluate a thrift's overall condition and performance by assessing six rating components. The six components are Capital Adequacy, Asset Quality, Management, Earnings, Liquidity, and Sensitivity to Market Risk. OTS then assigns each institution a composite rating based on the examiner's assessment of its overall condition and level of supervisory concern. Composite and component ratings are assigned based on a 1 to 5 numerical scale. A 1 indicates the highest rating, strongest performance and risk management practices, and least degree of supervisory concern, while a 5 indicates the lowest rating, weakest performance, inadequate risk management practices, and the highest degree of supervisory concern. A full-scope examination also looks at the thrift's compliance with fair lending, consumer protection, and other public interest laws and regulations, such as the Bank Secrecy Act.

The examination team prepares a Report of Examination (ROE) incorporating program findings and conclusions. OTS regional staff send the ROE to 1- and 2-rated thrifts within 30 days from completion of on-site examination activities, and to 3, 4, and 5 rated associations within 45 days from completion of on-site examination activities.

OTS provides FDIC information on and access to thrifts that represent a heightened risk to the Deposit Insurance Fund. OTS presumes heightened risk to be a thrift with a composite rating of 3, 4, or 5 or a thrift that is undercapitalized as defined under

[10] OTS is permitted to conduct examinations of thrifts with assets less than $500 million on an 18-month cycle if certain criteria are met.

EXHIBIT A

Prompt Corrective Action (PCA). FDIC may request participation in examinations when a thrift exhibits material deteriorating conditions that could result in the institution becoming troubled in the near future. In this regard, FDIC may need to develop contingency plans for a thrift's possible failure or begin the resolution process.

Types of Enforcement Actions Available to OTS

OTS uses informal and formal enforcement tools to carry out its supervisory and enforcement responsibilities; to address violations of laws and regulations, conditions imposed in writing and written agreement with the agency; and to address unsafe and unsound practices.

Informal Enforcement Actions

In accordance with OTS's enforcement handbook, when a thrift's overall condition is sound, but it is necessary to obtain strong commitment from the board of directors or management to ensure they will correct the identified problems and weaknesses, OTS may use informal enforcement actions. OTS commonly uses informal enforcement actions to address problems for well or adequately capitalized thrifts, thrifts with a composite rating of 1 or 2, or thrifts with a 3 rating but strong management. Informal enforcement actions are not made public.

Informal enforcement actions put the board and management on notice that OTS has identified problems in case a formal action is needed in the future. Informal actions may include:

- meetings with management and/or board of directors
- board of directors' resolutions
- supervisory letters and directives
- special examinations
- requests for voluntary management changes or reorganizations
- notice of deficiency and request for safety and soundness compliance plan
- individual minimum capital requirements

EXHIBIT A

The effectiveness of informal actions depends on the willingness and ability of the thrift to correct deficiencies identified by OTS. If the thrift violates or refuses to comply, OTS cannot enforce compliance in federal court or assess civil money penalties. However, a thrift's unwillingness to comply is a significant factor in determining whether a formal enforcement action is appropriate.

Formal Enforcement Actions

A formal enforcement action is both written and enforceable. Formal actions are appropriate when a thrift has significant problems, especially when there is a threat of harm to the thrift, depositors, or the public. OTS uses formal enforcement actions when informal actions are inadequate, ineffective, or unlikely to correct safety and soundness or compliance problems. The most frequently used formal enforcement actions used by OTS are:

- formal written agreements (Supervisory Agreements)
- cease and desist orders
- civil money penalties
- PCA directives

OTS can assess civil money penalties against the thrift and individuals for noncompliance with a formal action. OTS can also request a federal court to issue an injunction requiring the thrift to comply with the order. Unlike informal actions, formal enforcement actions are public.

OTS Enforcement Guidelines

Considerations for determining whether to use an informal supervisory action or take a formal enforcement action include:

- the extent of actual or potential damage, harm, or loss to the thrift because of the action or inaction
- whether the thrift has repeated the illegal action or unsafe or unsound practice
- the likelihood the conduct may occur again

- the thrift's record for taking corrective action in the past
- the capability, cooperation, integrity, and commitment of the thrift's management, board of directors, and ownership to correct identified problems
- the extent to which the identified problems were preventable and not solely the result of external factors
- the effect of the illegal, unsafe, or unsound conduct on other financial institutions, depositors, or the public
- the examination rating of the thrift
- whether the thrift's condition is improving or deteriorating
- the presence of unique circumstances

EXHIBIT A

10-K

An annual report filed by publicly-traded companies with the Securities and Exchange Commission presenting a financial overview of the company during the year.

10-Q

A comprehensive report of a company's performance that must be submitted quarterly by all public companies to the Securities and Exchange Commission. In the 10-Q, firms are required to disclose relevant information regarding their financial position.

80/20 loan

Requires no borrower down payment or mortgage insurance for this fully financed loan, which is written as two separate loans of 80 percent and 20 percent.

Asset/Liability Committee

Senior management committee in a bank or thrift institution, responsible for coordinating the institution's borrowing and lending strategy, and funds acquisition to meet profitability objectives as interest rates change. This committee also monitors actions by the Federal Reserve that may affect interest rates, such as a change in the Federal Reserve federal funds rate.

Allowance for loan and lease losses

A valuation reserve established and maintained by charges against the financial institution's operating income. As a valuation reserve, it is an estimate of uncollectible amounts that is used to reduce the book value of loans and leases to the amount that is expected to be collected. These valuation allowances are established to absorb unidentified losses inherent in the institution's overall loan and lease portfolio.

Alt-A loan

A mortgage made to a borrower that typically does not involve verification or documentation of income, assets, or employment. Instead, the approval of the loan is based primarily on the applicant's FICO score.

Baseline factor

Represents loss history and default possibilities that are established to calculate allowance for loan and lease losses (ALLL) and should reflect each segment of an institution's portfolio.

Brokered deposits

A deposit that is obtained, directly or indirectly, from a deposit broker. When a bank or thrift is less than well-capitalized, according to the "prompt corrective action" provisions of 12 CFR 6, the term "brokered deposits" may apply to any deposits it solicits by offering rates of interest that are significantly higher than the rates offered by other insured depository institutions in its normal market area. Under 12 USC 1831f and 12 CFR 337.6, the use of brokered deposits is limited to well-capitalized insured depository institutions and, with a waiver from the Federal Deposit Insurance Corporation (FDIC), to adequately capitalized institutions. Undercapitalized institutions are not permitted to accept brokered deposits

CAMELS

An acronym for the performance rating components: Capital adequacy, Asset quality, Management administration, Earnings, Liquidity, and Sensitivity to market risk. Numerical values range from 1 to 5, with 1 being the highest rating and 5 representing the worst-rated banks.

Capital restoration plan

A plan (CRP) submitted to the appropriate federal banking agency by any undercapitalized insured depository institution. A CRP specifies the steps the insured depository institution will take to become adequately capitalized, the levels of capital to be attained during each year in which the plan will be in effect, how the institution will comply with the restrictions or requirements then in effect, the types and levels of activities in which the institution will engage, and any other information that the federal banking agency may require.

Concentration risk

Risk in a loan portfolio that arises when a disproportionate number of an institution's loans are concentrated in one or a small number of financial sectors, geographical areas, or borrowers. If loans are more broadly distributed, weaknesses confined to one or a small number of sectors, areas, or borrowers would pose a smaller risk to the institution's financial health.

Conditional prepayment rate

A loan prepayment rate that is equal to the proportion of the principal of a pool of loans that is assumed to be paid off prematurely in each period. The calculation of this estimate is based on a number of factors such as historical prepayment rates for previous loans that are similar to ones in the pool and on future economic outlooks.

Debt-to-income

Ratio of the borrower's monthly obligations compared with the borrower's gross income. According to Office of Thrift Supervision (OTS) Examination Handbook, Section 217, Asset Quality, lenders may establish relatively low maximum allowable ratios such as 40 percent, or a higher allowable ration such as 50 percent. An institution's board of directors should establish underwriting standards that include prudent ratios that are appropriate for products in the institution's lending area that does not expose the institution to inordinate levels of credit risk.

Federal Home Loan Bank

A government sponsored enterprise (GSE) chartered by Congress in 1932. Its purpose is to support residential mortgage lending and community investment at the local level by providing primary direct loans to its more than 8,000 member financial institutions (primarily banks and thrift institutions). Each member institution is a shareholder in 1 or more of 12 regional Federal Home Loan Banks (FHLB), which are privately capitalized, separate corporate entities. The system's Office of Finance is its centralized debt issuance facility. The funds obtained through debt issuance are used to support FHLB activities.

FICO score

Credit scores provided to lenders by credit reporting agencies to reflect information that each credit bureau keeps on file about the borrower and are produced from software developed by Fair Isaac and Company. The credit scores take into consideration borrower information such as (1) timeliness of payments; (2) the length of time credit has been established; (3) the amount of credit used versus the amount of credit available; (4) the length of time at present residence; and (5) negative credit information such as bankruptcies, charge-offs, and collections. The higher the credit score is, the lower the risk to the lender.

Government Sponsored Enterprise

Privately held corporations with public purposes created by the U.S. Congress to reduce the cost of capital for certain borrowing sectors of the economy. GSEs carry the implicit backing of the U.S. Government, but they are not direct obligations of the U.S. Government. Examples of GSEs include: Federal Home Loan Banks, Fannie Mae, Freddie Mac and the Federal Farm Credit Bank.

Home equity line of credit

A form of revolving credit, similar to a credit card, which is secured by your home, with a set maximum credit limit. The revolving line of credit offers the borrowers the flexibility to borrow funds when they need them up to the total line of credit amount. Home equity lines of credit are also commonly known as HELOC loans.

Loan to value

Ratio for a single loan and property calculated by dividing the total loan amount at origination by the market value of the property securing the credit plus any readily marketable collateral or other acceptable collateral. In accordance with Interagency Guidelines for Real Estate Lending Polices dated October 12, 1999, institutions' internal loan to value ratios should not exceed (1) 65 percent for raw land; (2) 75 percent for land development; and (3) 80 percent for commercial, multifamily, and other non residential loans. The Guidelines do not require that institutions prescribe a limitation loans for owner-occupied one- to four-family properties and home equity loans. However, when loan-to-value (LTV) ratios exceed 90 percent at the time of origination, the Guidelines prescribe mortgage insurance or readily marketable collateral should be available.

Loan to one borrower

In accordance with 12 CFR section 560.93 regulations that impose lending limitations on thrifts to avoid the risk of concentrating too great of a portion of their assets in any single borrower who are related in a common enterprise. It limits the aggregate dollar amount of an association's loans to each borrower, but does not limit the number of loans to any one borrower with that aggregate dollar limitation.

Look-back periods

An approach to validate ALLL methodology by comparing actual losses to anticipated losses in an ALLL calculation.

Matter requiring board attention

A thrift practice noted during an OTS examination that deviates from sound governance, internal control, and risk management principles, and which may adversely impact the bank's earnings or capital, risk profile, or reputation, if not addressed; or result in substantive noncompliance with laws and regulations, internal policies or processes, OTS supervisory guidance, or conditions imposed in writing in connection with the approval of any application or other request by the institution. A matter requiring board attention (MRBA) is not a formal enforcement action per se. Nevertheless, OTS requires that thrifts address the matter and failure to do so may result in a formal enforcement action.

Moody's Investor Service

Used as a source for credit ratings, research and risk analysis. The service provides research data and analytic tools for assessing credit risk, and publishes market-leading credit opinions.

Mortgage servicing rights

A contractual agreement where the rights to service an existing mortgage are sold by the original lender to another party who specializes in servicing mortgages. Common services rights included are the right to collect mortgage payments monthly, set aside taxes and insurance premiums in escrow, and forward interest and principle to the mortgage lender.

Negative amortization

A loan repayment schedule in which the outstanding principal balance of the loan increases, rather than amortizing, because the scheduled monthly payments do not cover the full amount required to amortize the loan. The unpaid interest is added to the outstanding principal, to be repaid later.

No Doc loan

Short for "no-documentation loan." A mortgage in which the applicant provides a minimum amount of information -- name, address, Social Security number (so credit reports can be pulled), and contact information for an employer, if there is one. The underwriter decides on the loan based on the applicant's credit history, the appraised value of the house and size of down payment.

Non-conforming loans

Loans that do not have terms and conditions that follow the guidelines set forth by Fannie Mae and Freddie Mac. These two stockholder-owned corporations purchase mortgage loans complying with the guidelines from mortgage lending institutions, packages the mortgages into securities and sell the securities to investors. By doing so, Fannie Mae and Freddie Mac, like Ginnie Mae, provide a continuous flow of affordable funds for home financing that results in the availability of mortgage credit for Americans. Fannie Mae and Freddie Mac guidelines establish the maximum loan amount, borrower credit and income requirements, down payment, and suitable properties. Fannie Mae and Freddie Mac announce new loan limits every year.

Option ARM

A mortgage loan in which the interest rate is periodically adjusted based on a variety of indices.

Pipeline

Loans inventoried in an institution's held for sale portfolio to be sold to investors.

Prompt Corrective Action

Prompt Corrective Action (PCA) is a framework of supervisory actions, set forth in 12 USC § 1831, for insured depositary institutions that are not adequately capitalized. It was intended to ensure that action is taken when an institution becomes financially troubled in order to prevent a failure or minimize resulting losses. These actions become increasingly severe as the institution falls into lower capital categories. The capital categories are well-capitalized, adequately capitalized, undercapitalized, significantly undercapitalized, and critically undercapitalized.

Real Estate Investment Trust

A security that sells like a stock on the major exchanges and invests in real estate directly, either through properties or mortgages.

Reverse mortgage

A special type of home loan that lets a homeowner convert the equity in his or her home into cash. The equity built up over years of home mortgage payments can be paid to the homeowner in a lump sum, in a stream of payments, or as a supplement to Social Security or other retirement funds. But unlike a traditional home equity loan or second mortgage, no repayment is required until the borrowers no longer use the home as their principal residence.

Risk weighted assets

Used in terms of establishing the minimum amount of capital that is required within institutions that is based on a percentage of the assets, weighted by risk. Requires the institution to assess the risk associated with the loans in its portfolio, and those that hold more risk would require more capital for the institution.

Standard & Poor's

World provider of independent credit ratings, indices, risk evaluation, investment research and data.

Subprime

Loans for borrowers with (1) FICO score of less than 620, (2) late mortgage payment in the last 12 months (3) bankruptcy in the last 24 months, and/or (4) foreclosure in the last 36 months.

Thrift Financial Report

A financial report that thrifts are required to file quarterly with OTS. The report includes detailed information about the institution's operations and financial condition, and must be prepared in accordance with generally accepted accounting principles. The thrift financial report for thrifts is similar to the call report required of commercial banks.

Tier 1 capital

Represents common shareholder's equity (common stock, surplus, and retained earnings), non-cumulative perpetual preferred stock, and minority interests in the equity accounts of consolidated subsidiaries. In accordance with Financial Institutions Reform, Recovery, and Enforcement Act of 1989, OTS requires Tier 1 core capital to represent 4 percent of total assets adjusted for investment in subsidiaries, gains and losses on available-for-sale securities, and certain hedges. (3 percent if the thrift's composite CAMELS rating is 1).

Tier 2 capital (supplementary)

Consists of subordinated debt, intermediate-term preferred stock, cumulative and long-term preferred stock, and a thrift's ALLL up to 1.25 percent or risk-weighted assets. Tier 2 may not exceed Tier 1 capital.

Total risk based capital

The sum of Tier 1 and Tier 2 capital. In accordance with Financial Institutions Reform, Recovery, and Enforcement Act of 1989, OTS requires risk based capital to represent 8 percent of risk-weighted assets of the thrift.

Uniform Standard of Professional Appraisal Practice

Includes requirements of appraisers that are established to maintain public trust in appraisal practice. It reflects the current standards for the appraisal profession that are established by the Appraisal Foundation and required by OTS to be followed.

Volatile funding source

Source of funds that may present a potential risk to earnings and capital associated with brokered or other rate-sensitive deposits that may be only temporarily available or require premium rates to retain.

Wholesale lending

A lender's acquiring of loans from mortgage brokers. The borrower pays a provider fee to the broker to obtain the loan. Wholesale lenders may specialize in different type of loans, such as subprime, reverse mortgage, Alt-A, commercial and investment properties.

The following chronology describes significant events in the history of IndyMac Bank, FSB (IndyMac), including examinations conducted and enforcement actions taken by the Office of Thrift Supervision (OTS).

7/1/2000 IndyMac Mortgage Holdings, Inc. (IndyMac Mortgage), which was established in 1985 as a real estate investment trust, completes the acquisition of SGV Bancorp and its thrift subsidiary, First Federal Savings and Loan Association of San Gabriel Valley (FFSGV). IndyMac Mortgage changed its name to IndyMac Bancorp and FFSGV changed its name to IndyMac. IndyMac is wholly owned by IndyMac Bancorp, and commenced operations with $5.1 billion in assets. Its operating strategy was essentially the same as that of IndyMac Mortgage before the acquisition, with the primary change being the expansion of funding sources to include Federal Deposit Insurance Corporation (FDIC)-insured deposits and Federal Home Loan Bank (FHLB) advances.

4/16/2001 OTS begins a comprehensive examination of IndyMac. The examination was completed on June 15, 2001, and assigned composite/individual CAMELS ratings of 2/23322. FDIC examiners participated in the examination.

8/24/2001 Due to continued asset quality and management concerns, OTS downgraded IndyMac's composite CAMELS rating from 2 to 3, and requested IndyMac to temper its growth until the deficiencies noted in the April 16, 2001, report of examination (ROE) had been satisfactorily addressed. OTS requested IndyMac management to meet monthly with the OTS Assistant Regional Director, West Region.

6/17/2002 OTS conducts a field visit to follow-up on previous examination and field visit concerns related to IndyMac's appraisal policies and procedures, appraisal review practices, and appraisal methodology. Several large loans originated by IndyMac's Home Builders Division (HBD) were also reviewed. The field visit report indicates a separate investigation of appraisal activities was conducted and concluded on December 10, 2002. OTS concluded that existing appraisals and underwriting were sufficient to mitigate risks that the supervisory LTV guidance is meant to address.

EXHIBIT A

7/29/2002 OTS performs a comprehensive examination that was completed on November 1, 2002. The ROE assigned ratings of 2/232222. OTS noted that IndyMac hired a new chief commercial appraiser to assess the appraisal function at the thrift.

9/29/2003 OTS begins a comprehensive examination. The examination was completed on December 18, 2003, and assigned ratings of 2/222223.

7/16/2004 IndyMac Bancorp, the holding company, completed an equity offering that yielded net proceeds of approximately $100 million. The same day, the holding company acquires Financial Freedom Holdings, Inc., a reverse mortgage lender, for approximately $56 million.

11/15/2004 OTS begins a comprehensive examination. The examination was completed on January 27, 2005, and assigned ratings of 2/222223. The ROE noted OTS agreed to IndyMac's revised targeted core and total risk-based capital ratios of 7.0 and 11.25, percent after taking into consideration subprime loans, respectively, for the year ending December 31, 2005.

June 2005 IndyMac opens another branch office bringing its total number of branch offices to 22, an increase of 11 branch offices since June 2004 in an effort to strengthen core deposits.

8/22/2005 OTS conducts a field visit to review actions taken by IndyMac in response to the November 15, 2004, ROE. The scope included a review of risk management practices which OTS had directed the thrift to enhance. OTS concluded that management made progress in implementing an enhanced market risk management framework. OTS also concluded that management was aware that enhancements were needed in the development of net income modeling capability, and in the development of a Capital Plan/Policy for IndyMac Bancorp.

11/7/2005 OTS performs a comprehensive examination. The ROE was completed on January 20, 2006, and assigned ratings of 2/222222.

4Q2005 IndyMac received a $165 million capital infusion from IndyMac Bancorp.

1Q2006 IndyMac increased it branch offices to 26.

1/2007 IndyMac revised its underwriting standards for 80/20 loans by eliminating stated income loans for borrowers with FICO scores of less than 660 to show it was making efforts to reduce risk in its portfolio.

1/8/2007 OTS begins a comprehensive examination. The examination was completed on March 21, 2007, and assigned ratings of 2/222222.

2/26/2007 IndyMac makes a number of underwriting changes and updates its internal guidance: (1) held-for-sale, 80/20, and subprime loan underwriting guidelines are tightened; (2) the Home Builders Division (HBD) cuts portfolio dollar limits on condominiums, and cuts the maximum loan size by 75 percent and relationship by 60 percent; and (3) the Home Construction Lending (HCL) division eliminated investor loans, required participating builders to have at least 5 years of experience, and increased borrower liquidity and FICO score requirements. IndyMac also announced that it would stop acquiring option ARM loans from mortgage brokers. This was in response to concerns that subprime problems would carry over into the rest of the real estate market.

4/1/2007 IndyMac Bancorp executed an agreement with New York Mortgage Trust, Incorporated, to purchase certain assets for approximately $13.4 million, which included an $8 million premium to the net book value of assets acquired. This was a $2 billion retail mortgage origination business with 32 office locations.

7/19/2007 IndyMac laid-off 400 employees, which IndyMac's CEO stated in an e-mail to employees, would save IndyMac $30 million a year after a third quarter 2007 pre-tax charge of $6.5 million for severance payments for these employees.

8/14/2007 IndyMac projects losses of $30 million for the third quarter, the first quarterly loss in its history.

EXHIBIT A

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08/22/2007 IndyMac initiated significant changes to their multi-channel, Alt-A mortgage banking business model and established a new business strategy of primarily being an originator of conforming loans (loans that are under Fannie Mae and Freddie Mac limits and meet their standards for purchase) and a reverse mortgages lender. IndyMac eliminated various product lines including: (1) subprime loans, except those saleable to Fannie and Freddie; (2) 80/20 loans and (3) option ARM loans. IndyMac stopped purchasing loans from mortgage brokers.

8/29/2007 IndyMac assumes the leases of 100 American Home Mortgage offices and hires 1,400 American Home staff in a continued effort to expand its retail lending operations and move away from purchasing loans originated by mortgage brokers.

9/7/2007 IndyMac announces plans to eliminate up to 1,000 jobs and make other strategic changes.

11/6/2007 IndyMac Bancorp reports a net loss of nearly $203 million for the third quarter.

12/20/2007 IndyMac projects fourth quarter 2007 and first quarter 2008 losses of $153 million and $21 million, respectively. It attributes the projected losses primarily to increased credit losses and securities losses, and write-downs on loans that it had intended to sell but transferred to the thrift's held to maturity portfolio when the secondary market dried up.

12/20/2007 OTS contacts FDIC to participate on the comprehensive examination to begin January 7, 2008, because of IndyMac's deteriorating condition.

4Q2007 IndyMac transfers $10.7 billion in loans it intends to sell to its held to maturity portfolio.

1/7/2008 OTS began a comprehensive examination of IndyMac. The examination is started 4 months ahead of schedule due to concerns noted from off-site monitoring and meetings with management. Three FDIC examiners participated on the exam.

1/15/2008 IndyMac's Chief Executive Officer (CEO) announced a reduction in staff due to reduced loan originations.

1/17/2008 OTS downgraded IndyMac's CAMELS composite rating to 3 and lowered the asset quality and earnings component ratings to 4 based on results of off-site monitoring and initial findings of the examination started on January 7, 2008.

1Q2008 IndyMac Bancorp announced that it suspended common stock dividends.

2/12/2008 IndyMac Bancorp announces net loss of $509 million for the fourth quarter 2007. The loss included a $600 million write-down on the $10.7 billion of loans transferred to the held to maturity portfolio.

04/04/2008 OTS officials met with IndyMac's board of directors of the thrift in regards to dividend restrictions, the need for a capital cushion, and the need for the IndyMac Bancorp to build capital.

5/27/2008 FHLB San Francisco increases collateral requirements for IndyMac portfolios of held-for-sale loans and held to maturity loans.

6/3/2008 IndyMac, for the first time, projected its total risk based capital ratio will fall below the well-capitalized level as of June 30, 2008.

6/11/2008 OTS presented IndyMac with a memorandum Of understanding (MOU). IndyMac's board signed the MOU on June 26, 2008.

6/20/2008 OTS issued the ROE for the examination started on January 7, 2008. OTS downgraded IndyMac's rating to 5/454554.

6/20/2008 The MOU became effective and required management to (1) improve capital, (2) reduce problem assets, (3) build liquidity and improve contingency plans, and (4) build core earnings to attain profitability. The MOU also directs IndyMac to provide OTS with planning documents and reports. Additionally, the holding company and the thrift are prohibited from paying dividends without prior OTS approval.

06/20/2008 IndyMac's CEO states in a conference call with officials of OTS and FDIC that he now expects a second quarter 2008 loss of $120 million driven mostly by continued mortgage backed securities downgrades from rating agencies. The CEO also states that a potential investor, has hired an investment company to help conduct due diligence.

6/25/2008 OTS met with IndyMac management and three of its board members to review their capital raising efforts and contingency plans in the event additional capital is not available.

6/25/2008 IndyMac projected that its second quarter 2008 Tier 1 core capital would be 4.46 percent (adequately capitalized) and total risk based capital would be 7.28 percent (under capitalized). IndyMac, however, also projected that it would be profitable by the third quarter 2009 but this forecast assumed there would be no additional capital infusion and the thrift would close all single family residential retail and wholesale lending operations and reduce its work force by almost 3,000 employees.

6/25/2008 OTS and FDIC officials held the exit meeting on its January 2008 examination. IndyMac management was informed of the composite 5 rating assigned by the examination and the nature of the enforcement actions OTS was considering, which was the MOU (signed on June 26, 2008). At this meeting, IndyMac's CEO stated that he expected a decision regarding the potential investor within the next few days. The CEO also stated that an investment firm had re-engaged 96 potential investors and that 20 of these potential investors had expressed interest in IndyMac's reverse mortgage operations.

6/26/2008 Negative press reports were published regarding the viability of IndyMac. In the three days leading up to the reports, IndyMac reported to OTS net deposit inflows of $7.3 million (on June 24, 2006), $23.1 million (on June 25, 2008), and $1.8 million (on June 26, 2008).

6/26/2008 Senator Charles Schumer sends a letter to OTS and FDIC and releases it to the public pointing out problems with the thrift that the regulators need to be aware of and take actions to correct. The letter identified problems with the thrift's loan holdings and that the thrift had been dependent on brokered deposits. The letter suggested the thrift was on the verge of failure.

6/27/2008 IndyMac begins to provide hourly deposit outflow information and daily cash flow reports to OTS. The daily cash flow reports show the following net deposit outflows from June 27 to July 11, 2008 totaling $1.55 billion.

6/27/2008 (Friday)	$4.5 million
6/28/2008 (Saturday	$78.2 million
6/29/2008 (Sunday)	$118,000
6/30/2008 (Monday)	$84.5 million
7/1/2008 (Tuesday)	$205.6 million
7/2/2008 (Wednesday)	$147.4 million
7/3/2008 (Thursday)	$128.7 million
7/4/2008 (Friday)	$238,000
7/5/2008 (Saturday)	$45.8 million
7/6/2008 (Sunday)	$132,000
7/7/2008 (Monday)	$97.5 million
7/8/2008 (Tuesday)	$185.1 million
7/9/2008 (Wednesday)	$209.2 million
7/10/2008 (Thursday)	$115.0 million
7/11/2008 (Friday)	$250.0 million (Date Closed)

7/1/2008 OTS sent a Troubled Condition Letter to IndyMac, which did the following:

- restricted changes in management or the board composition;
- restricted transactions with affiliates
- established growth restrictions and dividend payments restrictions
- restricted severance payments and other "golden parachute payments"
- removed qualification for expedited treatment of applications and notices filed with OTS and notified the thrift it was now subject to higher assessments

7/1/2008 OTS issued a Supervisory Directive to IndyMac which required IndyMac to:

- finalize a new operating plan and submit it for OTS approval within 20 days
- report progress on meeting the approved plan

EXHIBIT A

- effective July 7, 2008, close the retail and wholesale forward mortgage lending units and no longer accept new rate locks in those units
- establish a concentration limit acceptable to OTS for reverse mortgage loans
- continue to comply with all understandings contained in the MOU effective 6/20/2008
- no longer except brokered deposits which required a request for a waiver from the FDIC

7/1/2008 In a letter, Federal Reserve Bank informed IndyMac that it was no longer considered to be in sound condition. IndyMac was also informed that it was subject to higher borrowing rates.

7/2/2008 Federal Reserve Bank informed IndyMac that the thrift has no funds available to it and that the Federal Reserve Bank would hold the thrift's collateral (nearly $4 billion).

7/3/2008 OTS presented a Cease and Desist Order that was not executed. The Order required IndyMac to (1) retain tier 1 core capital of 7 percent and total risk based capital of 13 percent at December 31, 2008, (2) accept no new loans in its retail and wholesale divisions, (3) within 20 days provide a business plan that returns the thrift to a safe and sound position, (4) execute a strategy that includes selling GSE reverse mortgages, retail banking operations, and mortgage servicing, (5) submit a liquidity plan, and (6) obtain approval from the regional director to issue dividends.

7/10/2008 FHLB San Francisco reduces IndyMac's credit line by $80 million to $90 million.

7/10/2008 OTS's Senior Deputy Director signed the decision memorandum ("S Memo") to close IndyMac.

7/11/2008 IndyMac requested $750 million from Federal Reserve Bank and is granted $500 million.

7/11/2008 OTS closed IndyMac and FDIC was named as conservator.

7/14/2008 IndyMac Federal Bank, FSB, opened for business as an FDIC-operated institution.

Date examination started	CAMELS rating	Assets (in millions)	Significant safety and soundness corrective actions cited in Reports of Examination 2001 - 2008
4/16/2001 Composite Downgrade 8/24/2001	2/233222 3/233222	$5732 $7425	**Matters requiring IndyMac Bank (IndyMac) board attention** • Ensure that appropriate action is taken to address the deficiencies identified throughout the Report. Specific emphasis should be placed on: (1) implementing an effective internal asset review (IAR) system, (2) addressing underwriting concerns and ensuring appropriate appraisal functions for both Construction Lending Corporation of America, a division of IndyMac, and the Mortgage Bank, and (3) ensuring an adequate quality control function at the Mortgage Bank. • Ensure that deficiencies related to the Asset Management Group's practices and processes are appropriately addressed. **Corrective actions to be taken by IndyMac** • Pending further guidance by Office of Thrift Supervision (OTS), ensure that all "low doc and no doc" loans that are not sold within 6 months of origination, or are repurchased after being sold, are risk weighted at 100 percent for risk-based capital purposes. • Review the entire land loan portfolio and ensure that the portions of land loans that exceed an 80.0 percent loan to value (LTV) ratio are appropriately deducted from risk-based capital. • Ensure that all loans sold with recourse provisions as defined in the ROE are converted on balance sheet and properly risk weighted. Enhance internal systems to better identify recourse arrangement associated with asset sales. • Adjust capital for assets considered impermissible real estate investments. • Adjust capital as appropriate at June 30, 2001 for all items noted. • Implement corrective action outline in memos provided to management during the examination. • Ensure compliance with Interagency Uniform Retail Credit Classification and Account Management Policy. • Divest acquisition, development, and construction loans determined to be impermissible at the Bank level. A divestiture plan should be included in the response, complete with a legal opinion to support that the plan complies with applicable regulations. Management should review the entire construction portfolio to ensure that all impermissible acquisition, development, and construction (ADC) loans have been removed from the Bank. • Discontinue using aggregate retail value to determine LTV ratios; instead, ratios must be based on discounted appraised value per OTS regulations and Uniform Standard of Professional Appraisal Practice (USPAP) guidelines. • Ensure the Post Purchase Quality Control maintains a timely review of single family residence (SFR) files and improves both the timeliness and accuracy of reviews. • Provide a legal opinion to support that the Bank's loan commitment and cap structures comply with loans to one borrower regulations. • Address the examination's concerns noted throughout the Report. • Submit significant changes in the business plan to OTS for approval. • Consider meeting more often than quarterly until all corrective actions have been implemented and verified effective. • Correct deficiencies identified in the Asset Management Group and implement corrective actions provided in management's written

Date examination started	CAMELS rating	Assets (in millions)	Significant safety and soundness corrective actions cited in Reports of Examination 2001 - 2008
			response dated June 14, 2001. Ensure independent verification of methodologies and processes by a source not affiliated with the Bank's outside auditor. • Amend the Investment Policy to exclude purchases of non-investment grade securities and residuals. Refrain from purchasing these securities unless OTS opines that they are permissible. The Bank should provide a legal opinion that supports their position. • Enhance the Accounting Department's independent review of internal security and residual valuations by contracting with an independent pricing service, or obtaining prices from at least 3 securities dealers. • Amend the Pipeline Interest Rate Risk (IRR) policy limits to address net exposure, clarify the Benchmark exposure limit for adjustable rate mortgages (ARM), and assure that asset/liability committee (ALCO) monitoring reports are updated to reflect policy amendments. • Expand efforts to obtain market data and support for manufactured housing servicing asset assumptions.
7/29/2002	2/232222	$7,112	Matters requiring IndyMac board attention • Ensure actions are implemented to address the "corrective actions" detailed in the report of examination (ROE). If full corrections cannot be achieved by December 20, 2002, provide a detailed plan for attaining such corrections including targeted completion date. **Corrective actions to be taken by IndyMac** • Develop a capital plan that ensures that capital levels remain fully satisfactory in relation to the higher risk assets, operations, and planned growth. This plan should be discussed with and submitted to OTS for review prior to implementation. • Strengthen Home Builder Division (HBD) infrastructure to ensure that the approval, underwriting, and portfolio monitoring documents provide accurate information for management to make sound lending decisions and provide for accountability of analysts, account officers, managers, and executive management. Develop an action plan that provides timeframe for completing interim goals as well as the completion of the entire plan. • Enhance underwriting process to ensure that references to aggregate retail values are excluded, borrower and guarantor financial statements are analyzed completely, underwriting exceptions are identified along with mitigating factors, loan approval conditions are met, and loan underwriting phasing matches appraisal valuations. • Ensure that the appropriate enhancements are made to the IAR policies to reflect the changes in the structure, timely classification and charge-off of homogeneous loans, and other policy enhancements as outlined in the September 16, 2002 memorandum to management. • Continue the loan-by-loan review of the SFR portfolio to identify loans that are no longer bankable assets and should be charged-off. Provide a list of the loans identified and the amount charged-off. • Provide more guidance in the lending policy for defining Comparable Market Area when determining compliance with policy loan-to-value requirements for tract projects. • Ensure that periodic training is provided to SFR and Home Construction Lending (HCL) underwriters. • Develop a specific/comprehensive loan policy that covers all aspects of

Date examination started	CAMELS rating	Assets (in millions)	Significant safety and soundness corrective actions cited in Reports of Examination 2001 - 2008
			subprime lending. • Develop a consistent methodology for categorizing quality control exceptions. • Ensure that post-purchase quality control audits are completed in accordance with policy guidelines. • Correct the SFR data integrity issues related to incorrect FICO scores and loan-to-value ratios. • Ensure that all supporting allowance for loan and lease losses (ALLL) workpapers are readily available for review, the Board reviews the quarterly analysis, and that loans with specific reserves are included when calculating the loss factor as required in the interagency policy statement regarding ALLL. • Address weaknesses in management performance as noted in other sections of the Report. • Review and adjust the policy and procedure approval process so that the Board is appropriately involved in initial and periodic approval of key institution policies and procedures. Ensure that a clear audit trail of Board actions in this regard is maintained. • Incorporate alternative interest rate scenarios in the budget/strategic planning process by December 31, 2002. • Ensure the independent risk management function is improved and provides effective oversight of all subjectively valued assets. • Ensure that the modeling techniques are appropriate and adequate documentation is maintained for subjectively valued assets. Option adjusted spread used to construct discount rates should be documented using observable prices from market transactions including the bank's own securitizations. Market convention should be used when deriving values for all illiquid investments such as the interest only commercial mortgage backed securities where the use of 100.0 percent conditional prepayment rate at the end of lockout or yield maintenance period is appropriate. • Consult with the OTS Regional Accountant regarding the appropriate number of impairment traunches to be used. • Enhance the usefulness of the finalized IRR results with institution specific deposit analysis and conduct analysis at more frequent intervals.
9/29/2003	2/222223	$10,611	**Matters requiring IndyMac board attention** • At a minimum, maintain capital ratios at the year-end 2004 Strategic Plan projections (core capital 7.37 percent, Tier 2 capital 11.62 percent and Risk-Based capital 12.27 percent). • Provide an update on management's progress in implementing a revised capital planning process. • Ensure the Audit Committee regularly reviews the status of audits, ensures that high risk audits are completed on schedule, and ensures that the 2004 audit plan is met. • Prepare a revised strategic plan reflecting current and projected operations and submit for OTS review. • Ensure actions are taken to address and correct the findings contained in the three memorandums noted in the "Corrective Actions" section of the Sensitivity comment. If full correction cannot be achieved by March 31, 2004, provide a detailed plan for attaining such corrections including

Date examination started	CAMELS rating	Assets (in millions)	Significant safety and soundness corrective actions cited in Reports of Examination 2001 - 2008
			target completion date(s). Corrective actions to be taken by IndyMac • At a minimum, maintain capital ratios at the year-end 2004 Strategic Plan projections (core capital 7.37 percent, Tier 2 capital 11.62 percent and Risk-Based capital 12.27 percent). • Provide OTS with an update on management's progress in implementing the revised capital planning process by February 27, 2004. • Continue the underwriting training. Emphasize asset, income, and employment documentation, and continue to monitor the effectiveness of the internal training through the post purchase quality control function. • Implement controls in the underwriting and appraisal review process to ensure improved appraisal quality. In addition, frequent appraisal errors should be communicated to IndyMac's major appraisal providers. • Properly document broker due diligence files to support the approval process and allow a third party reviewer to understand the rationale for approving the broker, particularly when the approval is outside of the established guidelines. • By February 27, 2004, provide the Assistant Regional Director a report detailing the actions taken or planned to address all the Corrective Actions and findings memorandums that were provided to management during the examination. • Continue the refinement and evolution of the Enterprise Risk Management process so that it can be relied upon in all areas, most importantly the oversight of the variable cash flow instrument (VCI) assets and hedging functions. • On a regular basis, ensure the audit committee reviews the status of audits, ensures that high risk audits are completed on schedule, and that the 2004 audit plan is met. • Prepare a revised strategic plan reflecting IndyMac's current and projected operations and submit that plan to the Assistant Regional Director for review by March 31, 2004. • Promptly address the recommendations as detailed in the memoranda provided during the examination that included (1) VCI Assessment and Compliance with Interagency Advisory on Mortgage Banking dated November 20, 2003, (2) Mortgage Servicing Rights and Interest Only Hedge Effectiveness and Performance dated November 21, 2003, and (3) Reconciliation of OTS and QRM Model Results dated November 19, 2003.
11/15/2004	2/222223	$15,005	Matters requiring IndyMac board attention • Provide OTS with corrective and follow-up information with regard to Market Risk Framework, the Board ALCO Hedge reporting, income modeling, prior examination findings, and home equity lines of credit securitizations, as outlined in various memorandums provided to management. Corrective actions to be taken by IndyMac • Provide management's attention to the ROE that discusses numerous recommendations made in Examiner Findings Memoranda that require management's continuing attention to fully address. • Continue the ongoing efforts to address the Compliance concerns of Financial Freedom to ensure correction of all violations and exceptions.

Date examination started	CAMELS rating	Assets (in millions)	Significant safety and soundness corrective actions cited in Reports of Examination 2001 - 2008
			• Promptly address the recommendations as detailed in the following memorandums provided during the examination: (1) Market Risk Framework, dated January 3, 2005; (2).Board ALCO Hedge Reporting, dated January 4, 2005; (3) Income Modeling, dated January 4, 2005; (4) Prior Year Examination Findings, dated January 4, 2005; (5) Home Equity Line of Credit Securitizations, dated January 12, 2005; and (6) Reverse Mortgage Lending, dated January 12, 2005.
11/7/2005	2/222222	$18,274	Matters requiring IndyMac board attention • Refine limits on certain asset concentrations relative to core capital. • Submit revised 2006 financial projections. • Provide Board assurance that the corrective actions planned to resolve audit and compliance issues at Financial Freedom (reverse mortgage) will be effectively overseen. • Implement recommendations relative to the quarterly liquidity stress analysis. • Provide assurances for the company-wide build-out of the thrift's market risk framework as described in the IRR Master Policy. • Implement a periodic net income stress analysis. • Establish a risk management trigger for basis risk using stress scenarios. **Corrective actions to be taken by IndyMac** • Submit to OTS for review the recast 2006 financial projections, including projected core and risk-based capital ratios. • Establish more refined exposure limits relative to core capital for nontraditional mortgage loans, Alt-A mortgage loans, and certain geographic loan concentrations. • Request management and the Board's assurance that the continued and planned corrective action to address all deficiencies noted in the internal audit reports, to improve operations, and to enhance the compliance program of Financial Freedom (reverse mortgages) will be effectively overseen and implemented. • Request that management provide regular reviews of progress in addressing these items at the quarterly regulatory update meetings. • Implement recommendations pertaining to the quarterly Liquidity Stress Analysis. • Continue the build-out of the Bank's market risk framework. OTS expectation is for the risk measures to be applied in aggregate at the Bank-wide level and sub-allocated, as appropriate at the individual business unit level as described in the IRR Master policy. • Develop and implement a periodic net income stress analysis. • Establish a risk management trigger for basis risk using stress scenarios.
1/8/2007	2/222222	$26,501	Matters requiring IndyMac board attention • For the Conduit Division, provide actions taken (1) to address the internal audit findings noted in the 2006 and 2007 internal audits, (2) to improve the internal control environment, and (3) to ensure the Division develops more robust, transparent management reports. • Ensure management re-evaluate senior management employment contracts and ensure that the incentive compensation component is weighed in accordance with the employee's responsibilities. • Ensure the new forecasting process is implemented.

EXHIBIT A

Date examination started	CAMELS rating	Assets (in millions)	Significant safety and soundness corrective actions cited in Reports of Examination 2001 - 2008
			Corrective actions to be taken by IndyMac • Ensure the Conduit Division corrects the internal audit findings noted in the last report and ensure the Division is operating in a strong internal controls environment. In addition, the Division must develop more robust, transparent management reports. • Establish a policy and related procedures for the identification and classification of troubled collateral dependent loans. • Refine current ALLL practices or introduce new methodologies to take advantage of more robust data and improve forecasts. • Ensure that the Board and management re-evaluate senior management employment contracts and ensure that the incentive compensation component addresses all significant aspects of the employee's responsibilities. • Ensure the new earnings forecasting process is implemented. • Revise the liquidity policy to reflect Treasury meetings as acceptable substitutes for capital funding and liquidity committee meetings. • Develop and implement thrift-wide risk measures and sub-allocate, as appropriate, to all individual business units.
1/7/2008	5/454554	$31,293	Matters requiring IndyMac board attention • Return the Bank's capital ratios to a level that supports its risk profile. • Provide the OTS with a forecast that includes a range of capital necessary to achieve and maintain sufficient capital ratios until implementation of the new strategic plan can provide income at a level that will support the Bank operations. • Ensure that liquidity strategies are in place to manage the Bank's inability to access high-rate brokered deposits, and if additional restrictions are placed on Federal Home Loan Bank Board (FHLB) and Federal Reserve Bank (FRB) borrowing limits. • Develop a clear strategy including scripts for media and customer inquiries to minimize effects of public disclosure of capital position and potential run on deposits. • Ensure that timely valuations are obtained for problem loans and that sufficient adjustment is made to address declining real estate values. • Provide the OTS with a detailed plan for reducing the level of classified and non-performing assets. • Provide OTS with a detailed business plan and budget supporting the new Government Sponsored Enterprise oriented business model, or any alternative business strategy. The pro-forma plan should include monthly income and expense items demonstrating that sufficient income can be generated to provide sufficient returns on capital to ensure viable operations. • Provide monthly variance reports to the OTS on the above plan on a monthly basis. • Ensure that all significant risks are identified, quantified, monitored and controlled to preserve the safety and soundness of the institution. • Ensure adequate resources are available to provide support and documentation for assumptions used in risk management models, valuation models, and information submitted to OTS for the Thrift Financial Report. Corrective actions to be taken by IndyMac • Augment capital to ensure that it supports the Bank's risk profile.

EXHIBIT A

Date examination started	CAMELS rating	Assets (in millions)	Significant safety and soundness corrective actions cited in Reports of Examination 2001 - 2008
			• Provide forecast that includes a range of capital necessary to achieve and maintain sufficient capital ratios until implementation of the new strategic plan can provide income at a level that will support the Bank operations. • Implement additional controls in Thrift Financial Report reporting to strengthen the quarterly compilation process. • Develop a formal plan for reducing the level of classified assets, including the level and concentration of problem HBD loans. • Ensure that timely valuations are obtained for problem loans and that sufficient adjustment is made to address declining real estate values. • Ensure independent IAR audits of HCL and HBD are conducted at least quarterly by internal IAR staff or through third party review. • Ensure resource sufficiency to conduct thorough internal asset reviews. • Revise the HCL scoring matrix to ensure that all modified loans are evaluated for review and classification purposes in a timely manner. • Ensure concentration limits are consistent with current business objectives and portfolio risks. • Ensure that all significant risks are identified, quantified, monitored and controlled to preserve the safety and soundness of the institution. • Ensure adequate resources are available to provide support and documentation for assumptions used in risk management models, valuation models, and information submitted to OTS for the Thrift Financial Report. • Enhance the forecasting process to include worst case scenarios and contingency plans. • Within 90 days, develop a one year-and a three-year strategic plan that provides for a detailed outline of the goals and objectives of the Bank and how it will meet those goals and objectives. The plan must include detailed financial projections for the period of the plan. In addition to a base scenario, the plan should include alternative scenarios that reflect best- and worst-case scenarios, including a scenario that projects continued contraction of the housing market for the next several years. • By August 1, 2008, develop monthly financial projections for the remainder of 2008. The Bank will submit monthly variance reports to the OTS within 30 days of month end. Any adverse variance in excess of 5 percent of the projected amount shall be explained in writing. All changes to the monthly projections must receive the written approval of the Regional Director. • By September 15, 2008, develop quarterly financial projections for 2009 and submit quarterly variance reports within 25 days of quarter end. As with the variance reports for 2008, any adverse variance in excess of five percent of the projected amount shall be explained in writing and any changes to the projections must be approved by the Regional Director, in writing. • Develop a contingency plan to ensure uninterrupted funding should the Bank become unable to access broker deposits. • Develop plans for responding to media and customer inquiries regarding the Bank's ability to meet funding obligations. • Conduct a review of existing documentation for all high risk models by September 30, 2008, and require updates from model owners, as needed. • Maintain, on an ongoing basis, a value at risk white paper that lays out the current model theory and methodology, as well as key assumptions.

Date examination started	CAMELS rating	Assets (in millions)	Significant safety and soundness corrective actions cited in Reports of Examination 2001 - 2008
			• Seek confirmation from other model owners that adequate documentation will be maintained on an ongoing basis. • Require Business Unit owners to certify that model documentation is up-to-date and complies with the Model Review Policy. • Improve data transparency and access, which will improve the Asset Liability Management Group's ability to provide greater levels of details and facilitate more detailed analysis. • Increase pricing and valuation cohorts used in the Bank's IRR model (management migrated most of its loan portfolios to PolyPaths thereby increasing pricing and valuation cohorts). • Grant review and approval authority over the cohorts to CIRRG's Model Research and Review Group to provide independent confirmation that the cohorts accurately capture the characteristics of the portfolio.

EXHIBIT A

This appendix includes a detailed discussion of four IndyMac-originated loans that we reviewed. These loans illustrate the weakest underwriting practices we observed in the sample of 22 loans we reviewed. The reviewed loans were delinquent 90 days or more as of August 31, 2008.

Loan 1

On May 2, 2007, IndyMac approved a $926,000 stated income loan for the borrower, which was secured by a one acre lot in Delray Beach, Florida. The loan was an adjustable rate mortgage with a 5-year term and a beginning interest rate of 5.875 percent, which was subject to change monthly. The purpose of the loan was to pay off a loan the borrower obtained from another lender to acquire the property and also to provide funds to build a house. The amount owed on the prior loan was approximately $919,000.

As a stated income loan, IndyMac performed no verification of the borrower's self-employment income of $50,000 a month ($600,000 annually). IndyMac also did not verify the borrower's assets. The loan file contained a copy of a signed request by the borrower to the Internal Revenue Service (IRS) for copies of past tax returns, but we found no evidence that IndyMac ever obtained the tax returns. According to an IndyMac official,[11] IndyMac had borrowers sign such requests as a "scare tactic," assuming that they would be more forthcoming on their stated income. In practice, however, we were told that IndyMac seldom forwarded the signed requests on to the IRS.

The loan file contained an appraisal which indicated that the property value was $1.43 million. This value was based on comparable properties that had been improved with single family residences. However, the comparable properties were located closer to the ocean and bay, and their values were based on listing price instead of the actual selling price. The appraised value also did not take in consideration a slowdown in the real estate market.

[11] The IndyMac official we interviewed about this loan and the other loans discussed in the appendix held the title of First Vice President, Quality Control – Enterprise Risk Management. At the time of our interview, the official held a similar position with IndyMac Federal Bank, FSB, the successor institution being operated by the Federal Deposit Insurance Corporation as conservator.

We saw no evidence in the loan file that IndyMac resolved these and other anomalies with the appraisal.

The borrower made payments totaling $5,389 before defaulting on the loan. The unpaid principal and interest at the time of foreclosure totaled approximately $1.01 million. At the time of our review, the property was listed for sale for an asking price of $599,000.

Loan 2

In November 2007, IndyMac approved a $3 million stated income loan, secured by the borrower's primary residence in Scottsdale, Arizona. The loan proceeds were used to refinance the primary residence which the borrower had owned for 11 years and reported its value as $4.9 million.

As a stated income loan, IndyMac performed no verification of the borrower's reported self-employment income of $57,000 a month ($684,000 annually). Contrary to IndyMac policy, the borrower selected the appraiser who appraised the property at $4.9 million. Notes in the loan file indicated that the borrower had listed the property for sale in November 2006, first at a price of $4.9 million that was later reduced to $4.5 million before the borrower pulled the property off the market. Despite this, the appraiser concluded that the value of $4.9 million appeared to be reasonable. IndyMac accepted the appraiser's value based on a review of online sale and public records. It did not physically inspect the property.

The borrower made no payments on the loan before default. The total delinquent loan amount as of November 2008 was $3,015,625. According to the IndyMac official, the property sold in October 2008 for $2.0 million.

Loan 3

In February 2007, IndyMac provided the borrower a stated income, 80/20 loan, for a combined total of $1.475 million, to purchase a property in Marco Island, Florida. The combined loan equaled the appraised value of the property.

As a stated income loan, IndyMac performed no verification of the borrower's reported income of $28,500 a month ($342,000 annually). For 80/20 loans, IndyMac allowed an $800,000/$200,000 maximum loan amount and a maximum combined loan amount of $1 million. This loan was an exception to IndyMac policy as the combined loan amount of $1,475,000 exceeded the maximum combined loan amount. The loan exception was approved anyway.

Various appraisals in the loan file contained significant differences with no indication of how they were resolved by IndyMac. A January 2007 appraisal valued the property at $1.48 million. A valuation analysis prepared by an IndyMac employee on January 25, 2007, stated that the skill level of the appraiser was unacceptable—the appraiser had not provided accurate comparable properties to the subject property and did not accurately consider the location of the property. The IndyMac employee estimated the property value at $1 million and recommended that another appraisal be obtained. Another note in the loan indicated that the IndyMac official overruled the employee's recommendation and the appraisal was accepted. The IndyMac official, however, adjusted the appraised value approximately 10 percent lower, to $1.33 million, citing as a justification that a property on the same street had sold for $1.97 million.

The borrower made no payments before defaulting on the combined $1.48 million loans. According to the IndyMac official, the borrower deeded the property to the thrift in lieu of foreclosure. The IndyMac official estimated in November 2008 that the property was worth about $700,000.

Loan 4

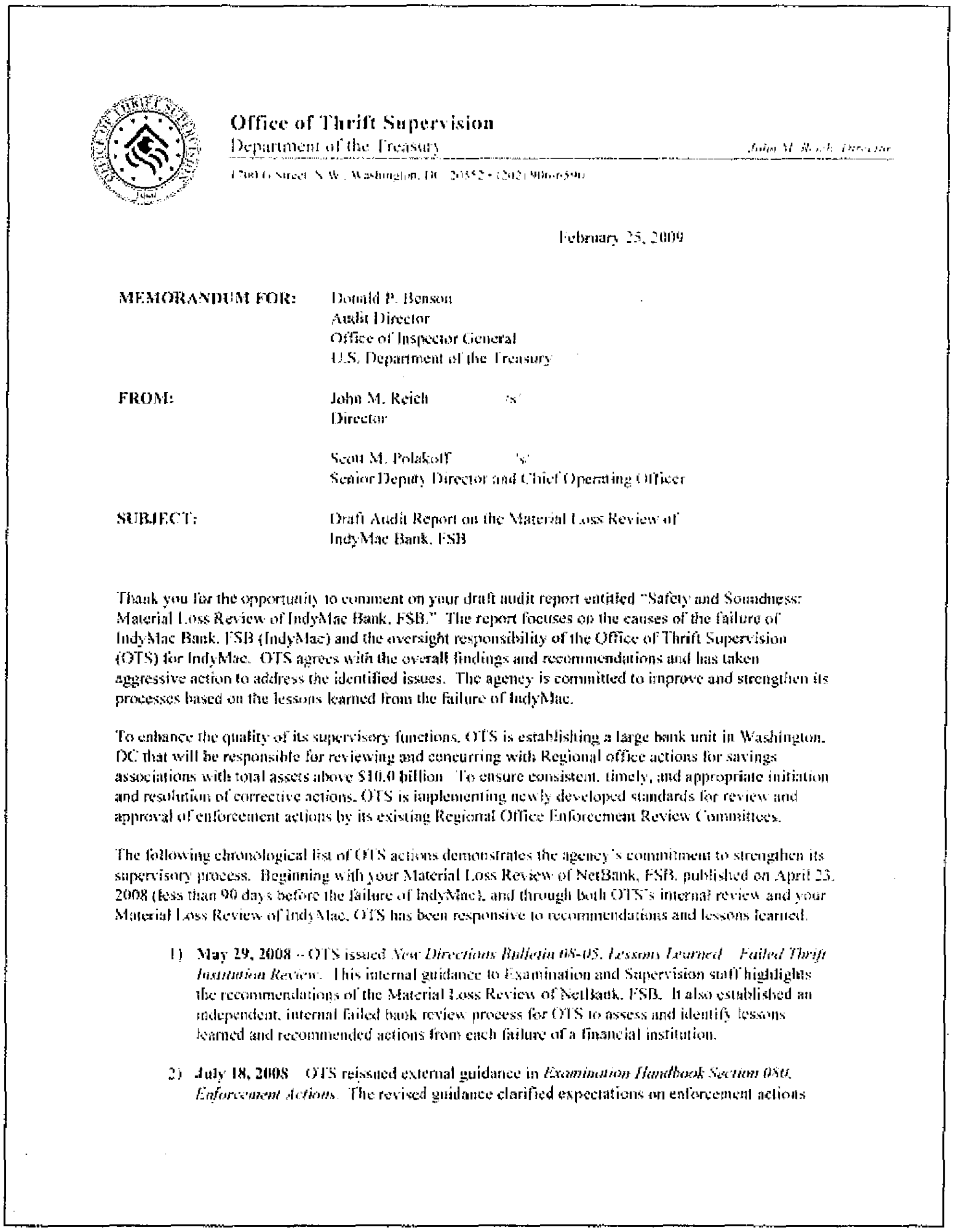
As illustrated by this example, IndyMac was originating high-risk loans early in its existence. According to an IndyMac official, this is perhaps IndyMac's largest loss from a single loan, estimated to be as large as $2.3 million.

In April 2002, IndyMac approved the borrower for a stated income home equity line of credit of $550,000. This line of credit was in addition to a 80/20 loan for $3 million that the borrower already had with IndyMac. The borrower reported that the property was worth $5.2 million.

As a stated income loan, IndyMac performed no verification of the borrower's reported gross income of $95,000 a month ($1.14 million annually) as the owner/manager of a limited liability corporation. The loan notes history did not indicate how IndyMac resolved negative information revealed in credit reports on the borrower. Two credit reports obtained in March 2002 listed serious and frequent delinquencies. An earlier credit report had noted a discrepancy with the borrower's social security number.

Various appraisals in the loan file also contained significant discrepancies with no indication of how they were resolved by IndyMac. Specifically, the appraisal for the original 80/20 loan, dated in October 2001, valued the property which the appraisal described as new construction at $5.2 million. This same value was reported by a second appraisal dated in March 2002. A third appraisal, dated in April 2002, placed the market value of the home at $508,500. The appraisal stated that the home was less than ½ mile from a hazardous waste facility. A fourth appraisal, also prepared in April 2002, valued the property at $730,000, with the lowest reasonable value at $590,000 and the highest reasonable at $900,000. This appraiser also reported that the home was built in 1959.

The borrower made payments totaling about $11,000 before defaulting on the $550,000 home equity line of credit loan. According to the IndyMac official, the thrift was able to recover approximately $600,000 on both loans. Funds were recovered in part from the title company and in part from two different appraisers.



Office of Thrift Supervision
Department of the Treasury
John M. Reich, Director

1700 G Street, N.W., Washington, DC 20552 • (202) 906-6590

February 25, 2009

MEMORANDUM FOR: Donald P. Benson
Audit Director
Office of Inspector General
U.S. Department of the Treasury

FROM: John M. Reich /s/
Director

Scott M. Polakoff /s/
Senior Deputy Director and Chief Operating Officer

SUBJECT: Draft Audit Report on the Material Loss Review of IndyMac Bank, FSB

Thank you for the opportunity to comment on your draft audit report entitled "Safety and Soundness: Material Loss Review of IndyMac Bank, FSB." The report focuses on the causes of the failure of IndyMac Bank, FSB (IndyMac) and the oversight responsibility of the Office of Thrift Supervision (OTS) for IndyMac. OTS agrees with the overall findings and recommendations and has taken aggressive action to address the identified issues. The agency is committed to improve and strengthen its processes based on the lessons learned from the failure of IndyMac.

To enhance the quality of its supervisory functions, OTS is establishing a large bank unit in Washington, DC that will be responsible for reviewing and concurring with Regional office actions for savings associations with total assets above $10.0 billion. To ensure consistent, timely, and appropriate initiation and resolution of corrective actions, OTS is implementing newly developed standards for review and approval of enforcement actions by its existing Regional Office Enforcement Review Committees.

The following chronological list of OTS actions demonstrates the agency's commitment to strengthen its supervisory process. Beginning with your Material Loss Review of NetBank, FSB, published on April 23, 2008 (less than 90 days before the failure of IndyMac), and through both OTS's internal review and your Material Loss Review of IndyMac, OTS has been responsive to recommendations and lessons learned.

1) **May 29, 2008** – OTS issued *New Directions Bulletin 08-05, Lessons Learned – Failed Thrift Institution Review*. This internal guidance to Examination and Supervision staff highlights the recommendations of the Material Loss Review of NetBank, FSB. It also established an independent, internal failed bank review process for OTS to assess and identify lessons learned and recommended actions from each failure of a financial institution.

2) **July 18, 2008** – OTS reissued external guidance in *Examination Handbook Section 080, Enforcement Actions*. The revised guidance clarified expectations on enforcement actions

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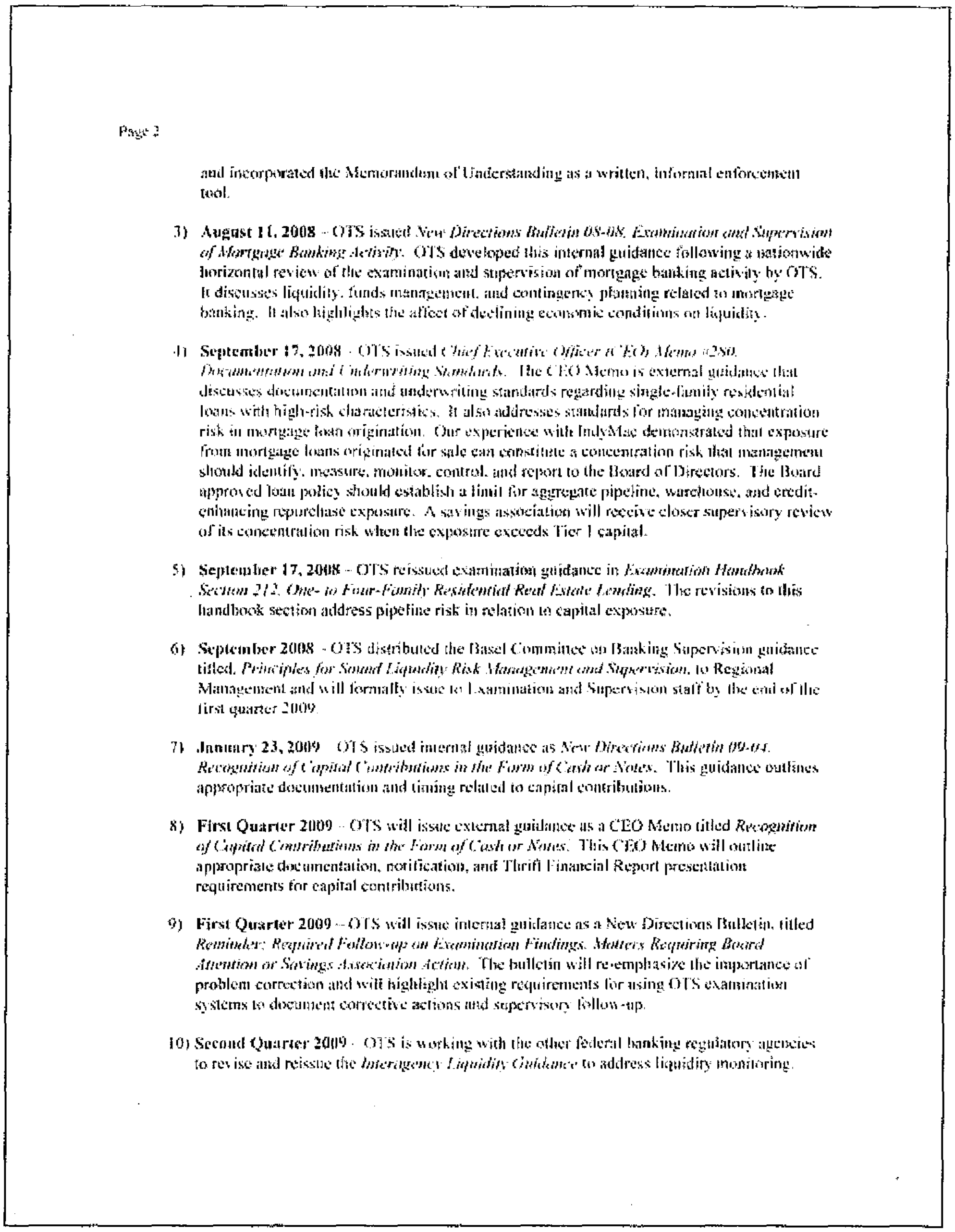

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and incorporated the Memorandum of Understanding as a written, informal enforcement tool.

3) **August 11, 2008** – OTS issued *New Directions Bulletin 08-08, Examination and Supervision of Mortgage Banking Activity*. OTS developed this internal guidance following a nationwide horizontal review of the examination and supervision of mortgage banking activity by OTS. It discusses liquidity, funds management, and contingency planning related to mortgage banking. It also highlights the affect of declining economic conditions on liquidity.

4) **September 17, 2008** – OTS issued *Chief Executive Officer (CEO) Memo #280, Documentation and Underwriting Standards*. The CEO Memo is external guidance that discusses documentation and underwriting standards regarding single-family residential loans with high-risk characteristics. It also addresses standards for managing concentration risk in mortgage loan origination. Our experience with IndyMac demonstrated that exposure from mortgage loans originated for sale can constitute a concentration risk that management should identify, measure, monitor, control, and report to the Board of Directors. The Board approved loan policy should establish a limit for aggregate pipeline, warehouse, and credit-enhancing repurchase exposure. A savings association will receive closer supervisory review of its concentration risk when the exposure exceeds Tier 1 capital.

5) **September 17, 2008** – OTS reissued examination guidance in *Examination Handbook Section 212, One- to Four-Family Residential Real Estate Lending*. The revisions to this handbook section address pipeline risk in relation to capital exposure.

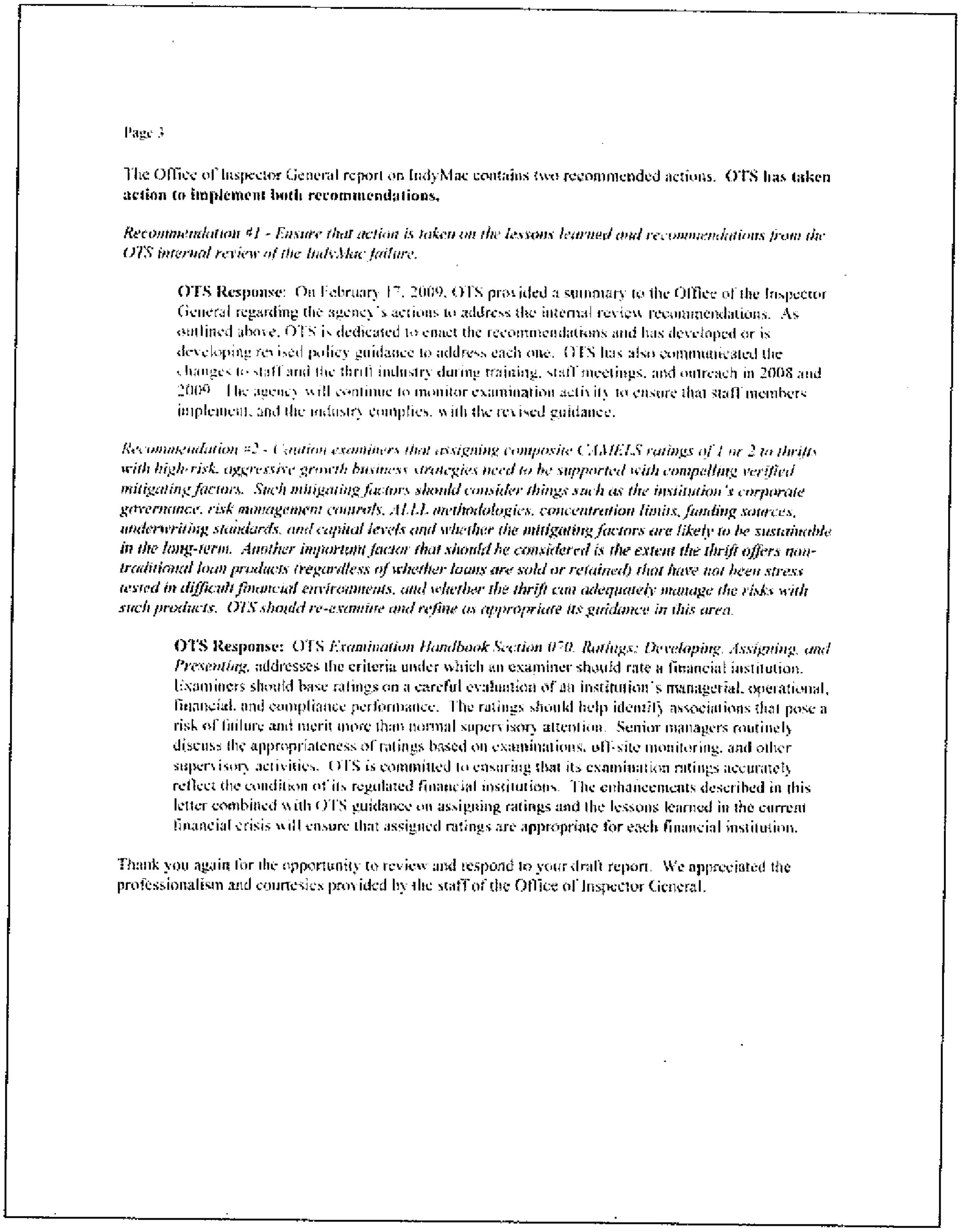
6) **September 2008** – OTS distributed the Basel Committee on Banking Supervision guidance titled, *Principles for Sound Liquidity Risk Management and Supervision*, to Regional Management and will formally issue to Examination and Supervision staff by the end of the first quarter 2009.

7) **January 23, 2009** – OTS issued internal guidance as *New Directions Bulletin 09-04, Recognition of Capital Contributions in the Form of Cash or Notes*. This guidance outlines appropriate documentation and timing related to capital contributions.

8) **First Quarter 2009** – OTS will issue external guidance as a CEO Memo titled *Recognition of Capital Contributions in the Form of Cash or Notes*. This CEO Memo will outline appropriate documentation, notification, and Thrift Financial Report presentation requirements for capital contributions.

9) **First Quarter 2009** – OTS will issue internal guidance as a New Directions Bulletin, titled *Reminder: Required Follow-up on Examination Findings, Matters Requiring Board Attention or Savings Association Action*. The bulletin will re-emphasize the importance of problem correction and will highlight existing requirements for using OTS examination systems to document corrective actions and supervisory follow-up.

10) **Second Quarter 2009** – OTS is working with the other federal banking regulatory agencies to revise and reissue the *Interagency Liquidity Guidance* to address liquidity monitoring.



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The Office of Inspector General report on IndyMac contains two recommended actions. **OTS has taken action to implement both recommendations.**

Recommendation #1 - Ensure that action is taken on the lessons learned and recommendations from the OTS internal review of the IndyMac failure.

> **OTS Response:** On February 17, 2009, OTS provided a summary to the Office of the Inspector General regarding the agency's actions to address the internal review recommendations. As outlined above, OTS is dedicated to enact the recommendations and has developed or is developing revised policy guidance to address each one. OTS has also communicated the changes to staff and the thrift industry during training, staff meetings, and outreach in 2008 and 2009. The agency will continue to monitor examination activity to ensure that staff members implement, and the industry complies, with the revised guidance.

Recommendation #2 - Caution examiners that assigning composite CAMELS ratings of 1 or 2 to thrifts with high-risk, aggressive growth business strategies need to be supported with compelling verified mitigating factors. Such mitigating factors should consider things such as the institution's corporate governance, risk management controls, ALLL methodologies, concentration limits, funding sources, underwriting standards, and capital levels and whether the mitigating factors are likely to be sustainable in the long-term. Another important factor that should be considered is the extent the thrift offers non-traditional loan products (regardless of whether loans are sold or retained) that have not been stress tested in difficult financial environments, and whether the thrift can adequately manage the risks with such products. OTS should re-examine and refine as appropriate its guidance in this area.

> **OTS Response:** OTS *Examination Handbook Section 070, Ratings: Developing, Assigning, and Presenting,* addresses the criteria under which an examiner should rate a financial institution. Examiners should base ratings on a careful evaluation of an institution's managerial, operational, financial, and compliance performance. The ratings should help identify associations that pose a risk of failure and merit more than normal supervisory attention. Senior managers routinely discuss the appropriateness of ratings based on examinations, off-site monitoring, and other supervisory activities. OTS is committed to ensuring that its examination ratings accurately reflect the condition of its regulated financial institutions. The enhancements described in this letter combined with OTS guidance on assigning ratings and the lessons learned in the current financial crisis will ensure that assigned ratings are appropriate for each financial institution.

Thank you again for the opportunity to review and respond to your draft report. We appreciated the professionalism and courtesies provided by the staff of the Office of Inspector General.

Department of the Treasury, Office of Inspector General

Boston Audit Office

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EXHIBIT A

Department of the Treasury

Office of Strategic Planning and Performance Management
Office of Accounting and Internal Control

Office of Thrift Supervision

Office of Thrift Supervision
Liaison Officer

Office of Management and Budget

OIG Budget Examiner

Federal Deposit Insurance Corporation

Chairman

United States Senate

Chairman and Ranking Member
Committee on Banking, Housing, and Urban Affairs

U.S. House of Representatives

Chairman and Ranking Member
Committee on Financial Services

Comptroller General of the United States

Acting Comptroller General

EXHIBIT B

CENTER FOR
RESPONSIBLE
LENDING

INDYMAC: WHAT WENT WRONG?

How an "Alt-A" Leader Fueled its Growth with Unsound and Abusive Mortgage Lending

CRL Report
June 30, 2008

Mike Hudson

In Brief: IndyMac's story offers a body of evidence that discredits the notion that the mortgage crisis was caused by rogue brokers or by borrowers who lied to bankroll the purchase of bigger homes or investment properties. CRL's investigation indicates many of the problems at IndyMac were spawned by top-down pressures that valued short-term growth over protecting borrowers and shareholders' interests over the long haul.

> *"...I would reject a loan and the insanity would begin. It would go to upper management and the next thing you know it's going to closing."*
> —Audrey Streater, former Indymac underwriting team leader in an interview with CRL.

About the Center for Responsible Lending

The Center for Responsible Lending (CRL) is a national nonprofit, nonpartisan research and policy organization dedicated to protecting home ownership and family wealth by working to eliminate abusive financial practices. CRL is affiliated with Self-Help, the nation's largest community development financial institution.

For additional information, please visit our website at **www.responsiblelending.org**.

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Ben Butler, an 80-year-old retiree in Savannah, Georgia got an IndyMac loan in 2005 to build a modular house. IndyMac okayed the mortgage based on an application that said Mr. Butler made $3,825 a month in Social Security income.

One problem: The maximum Social Security benefit at the time was barely half that. Mr. Butler had no idea his income had been inflated by IndyMac or the mortgage broker who arranged the deal, his attorney maintains. Even if IndyMac wasn't the one that puffed up the dollar figure, the attorney says, it should have easily caught such an obvious lie.[1]

Simeon Ferguson, an 86-year-old retired chef, ran into similar problems with an IndyMac loan in Brooklyn, New York.

His attorneys claim a mortgage broker steered Mr. Ferguson, who was suffering from dementia, into an IndyMac "stated income" loan program for retirees. IndyMac made no effort to verify retirees' income, attempting to duck accountability "by deliberately remaining ignorant of the borrower's ability to pay the mortgage," his lawsuit says. IndyMac's instructions for preparing the mortgage application required that "the file must not contain any documents that reference income or assets."[2]

In the case of **Elouise Manuel**, a 68-year-old Decatur, Georgia retiree, IndyMac instructed the mortgage broker to send copies of her Social Security award letters with the dollar amounts expunged: "Need copy of SSI letter blacked out for the last 2 yrs w/no ref to income."[3]

Each time, the result was the same: borrowers trapped in loans they couldn't afford.

They are not alone. An investigation by the Center for Responsible Lending has uncovered substantial evidence that IndyMac Bank and its parent, IndyMac Bancorp, engaged in unsound and abusive lending during the mortgage boom, routinely making loans without regard to borrowers' ability to repay. These practices left many deep in debt and struggling to avoid foreclosure.

CRL interviews with former employees and lawsuits in 10 states indicate that IndyMac

- pushed through loans based on bogus appraisals and income data that exaggerated borrowers' finances;
- worked hand-in-hand with mortgage brokers who misled borrowers about their rates and other loan terms and stuck them with unwarranted fees; and
- treated many elderly and minority consumers unfairly.

In interviews and court documents, 19 former employees describe an atmosphere where the hunger to close loans ruled. They say IndyMac pushed through loans with fudged or falsified information or simply lowered standards so dramatically that shaky loans were easy to approve.

[1] Letter, Scott Vaughan, attorney at law, to Clarice Paschel, IndyMac, October 8, 2007.
[2] Ferguson v. IndyMac Bank, U.S. District Court for the Eastern District of New York, filed February 14, 2008.
[3] Manuel v. American Residential Financing, Inc., et al, Superior Court of Gwinnett County, State of Georgia, April 3, 2008.

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Most of these ex-employees were mortgage underwriters who were responsible for reviewing loan applications to make sure information was accurate and that borrowers could afford the deals. Many say their efforts to do their jobs were hamstrung by higher-ups.

"I would reject a loan and the insanity would begin," Audrey Streater, a former underwriter and underwriting team leader for IndyMac in New Jersey, said in an interview with CRL. "It would go to upper management and the next thing you know it's going to closing. . . . I'm like, 'What the Sam Hill? There's nothing in there to support this loan.' "[4]

Disneyland loans

Like many other lenders during the housing and mortgage boom of 2003-2006, IndyMac moved away from documenting borrowers' incomes and assets – basic information that's crucial to determining whether consumers can afford a loan.

Take, for example, a $354 million pool of mortgages that IndyMac packaged into a mortgage-backed securities deal in June 2006. Less than 10% of the dollar volume involved "full-documentation" loans. The rest involved low or no-documentation loans -- mostly "stated income" loans in which borrowers' income was simply affirmed without supporting evidence such as tax documents or pay stubs.[5]

As recently as the first quarter of 2007, just 21% of IndyMac total loan production involved "full-doc" mortgages.[6]

As IndyMac lowered standards and pushed for more volume during the mortgage boom of 2003-2006, the quality of loans became a running joke among its employees, according to a former IndyMac fraud investigator who is cited as a "confidential witness" in a lawsuit in California.[7] The investigator says shoddily documented loans were known inside the company as "Disneyland loans" – in honor of a mortgage issued to a Disneyland cashier whose loan application claimed an income of $90,000 a year.

Another witness cited in the case, a former IndyMac vice president, claims chief executive Michael Perry and other top managers focused on increasing loan volume "at all costs," putting pressure on subordinates to disregard company policies and simply "push loans through."

[4] Audrey Streater, telephone interview, Center for Responsible Lending.

[5] IndyMac INDX Mortgage Loan Trust 2006-FLX1, Prospectus dated June 14, 2006. A check of two other IndyMac loan pools put together around the same time show a higher percent of "full-doc" loan volume – 16% to 26%.

[6] IndyMac Bancorp Inc., 8K filing with Securities and Exchange Commission, May 12, 2008. IndyMac has now moved decidedly back in the direction of fully documenting borrowers income and other particulars, with 69% of its loan volume in March 2008 involving "full-doc" mortgages.

[7] Tripp et al v. IndyMac et al, U.S. District Court for the Central District of California, filed March 12, 2007. Unless otherwise indicated, all references to Tripp v. IndyMac refer to the "Third Amended Class Action Complaint" that was filed with the court on June 6, 2008.

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Another former employee quoted in the suit claims Perry told him "business guys rule" and "[expletive deleted] you to compliance guys." As a result, this ex-employee claims, IndyMac was about "production and nothing else."

The company says the ex-employees' statements in the lawsuit are a mishmash of hearsay and speculation, and says the suit is "long on words but short of substance" and full of "meaningless filler."[8] The company says the simple truth is that it suffered rising borrower defaults and plunging profits not because management pushed through bad loans, but because the company "got caught in the same financial hurricane that affected every other participant in the mortgage and housing industries."[9]

IndyMac also denies wrongdoing in other lawsuits that it's battling around the nation. At this point, these cases are still wending their way through the legal process and haven't been proven in court, so the allegations remain just that – allegations.

"A much more responsible way"

The company says it supports "responsible lending that is free of unfair or deceptive acts or practices." It says it was a leader in providing clear disclosures to borrowers about the potential for "payment shock" as adjustable rate loans reset. And it says its pricing disclosures are designed to make sure borrowers understand what they're getting.[10]

And while it acknowledges it "loosened its lending standards along with everyone else" in an effort to "compete and grow," it says it did so "in a much more responsible way" than other lenders.[11]

"IndyMac and most home lenders were not 'greedy and stupid,' " IndyMac CEO Perry told shareholders in February. "Most of us believe that innovative home lending served a legitimate economic and social purpose, allowing many US consumers to be able to achieve the American dream of homeownership . . . and we still do."[12]

Perry said a good part of the blame for the company's problems lies with forces outside its control, including the fall in prices of mortgage-backed investments packaged by Wall Street and the huge decline in home prices and home sales.[13]

He's also lashed out at "house flippers" who took advantage of lenders' easy-credit policies. When IndyMac announced more than $200 million in losses for the third quarter of 2007, Perry

[8] Tripp v. IndyMac.

[9] Tripp v. IndyMac.

[10] Letter from Richard Wohl, president, IndyMac Bank, to U.S. Office of Thrift Supervision, November 5, 2007. http://www.ots.treas.gov/docs/9/962970.pdf.

[11] Matt Padilla, "Lenders and their creative accounting; Part I, IndyMac answers questions about loan losses," Orange County Register, May 12, 2007. http://mortgage.freedomblogging.com/2007/05/12/lenders-and-their-creative-accounting-part-i-indymac-answers-questions-about-loan-losses/

[12] Business Wire, "IndyMac Issues 2007 Annual Shareholder Letter," February 12, 2008.

[13] "2007 Annual Shareholder Letter."

blamed these fast-buck artists for his company's financial stumbles. "A lot of speculators crept into the market – people who lied about their intent to live in the homes," he told the *Los Angeles Times*. Many used second mortgages – known as "piggyback" loans – to snap up houses without having to put any money down, Perry said. As home values swooned, he added, these speculators had little incentive to keep paying their mortgages.[14]

Some insiders paint a different picture. They describe IndyMac as less a victim than a facilitator of bad practices. The former vice president quoted in California court documents claims Perry and other top executives were aware that fraud and lying were rampant in the company's loan-approval process.[15] Another ex-employee – the former fraud investigator – claims that the vice president in charge of the company's fraud investigation department was pressured by upper management not to report fraud, and in one case was pressured to "sanitize" a report on the company's loan pipeline.[16]

THE COMPANY: Why IndyMac is important

IndyMac is a case study in the rise and fall of America's mortgage market. Its story offers a body of evidence that discredits the notion that the mortgage crisis was caused by rogue brokers or by borrowers who lied to bankroll the purchase of bigger homes or investment properties. CRL's investigation indicates many of IndyMac's problems were spawned by top-down pressures that placed short-term growth ahead of borrowers' and shareholders' interests over the long haul.

In this sense, the Pasadena, California-based company has much in common with its rival and one-time parent, Countrywide Financial Corp.,[17] and other lenders that grew wildly before falling on hard times.

IndyMac by the numbers

	Total loan production by year in billions	Mortgage industry market share	Return on average equity
2003	$29	0.8%	17%
2004	$38	1.4%	17.4%
2005	$61	2.0%	21.2%
2006	$90	3.3%	19.1%
2007	$77	3.3%	-31.1%

SOURCES: IndyMac filings with Securities and Exchange Commission

[14] E. Scott Reckard, "IndyMac's loss much wider than expected," *Los Angeles Times*, November 7, 2007.
[15] Tripp v. IndyMac.
[16] Tripp v. IndyMac.
[17] Center for Responsible Lending, "Unfair and Unsafe: How Countrywide's irresponsible practices have harmed borrowers and shareholders," February 7, 2008. http://www.responsiblelending.org/pdfs/unfair-and-unsafe-countrywide-white-paper.pdf.

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IndyMac's lending volume and profits soared during the mortgage boom. Loan volume tripled in three years, approaching $90 billion in 2006. It grew far faster than most of its competitors; its share of the national mortgage market increased from 0.77% to 3.30% over that span. Profits more than doubled over those three years, hitting $343 million in 2006.

In 2007 and 2008, however, it suffered a dramatic reversal of fortune. IndyMac's "non-performing assets"– bankspeak for loans that have gone bad – have been growing at a steep rate. The firm's dollar volume of non-performing assets exploded 11-fold in 15 months – going from $184 million (0.63% of assets) at the close of 2006 to $2.1 billion (6.51% of assets) at the end of the first quarter of 2008.[18] IndyMac generally defines "non-performing assets" as loans that are at least 90 days overdue or in foreclosure.

As a result of the growing numbers of bad loans and a drop in mortgage originations, IndyMac posted a $615 million loss in 2007, and a $184 million loss in the first three months of 2008. That combined loss of nearly $800 million over 15 months means that it has more than given back all of the $636 million in profits it posted in 2005-2006, at the height of the mortgage boom.

Meanwhile, IndyMac's stock price, which hit its highest level ever at the end of 2006, topping $45, has plummeted, falling below one dollar as of June 26, 2008. Long-time shareholders have lost some 95% of their value in just over two years.

The company has eliminated riskier products such as low documentation Alt-A loans and "piggy back" loans[19], and Michael Perry continues to express optimism that the company will turn things around once the housing market improves.

Alt-A empire

IndyMac's record is also worth scrutinizing because of the ways it differs from many lenders involved in the mortgage mess.

For one thing, IndyMac's specialty was not subprime loans, but so-called Alt-A loans. While subprime loans were supposed to go to borrowers with the weakest credit profiles, Alt-A loans were generally supposed to be aimed at borrowers who had better credit but couldn't document all their income or assets. These borrowers paid higher rates than traditional prime borrowers, but lower rates than subprime borrowers.

No lender was more steeped in the Alt-A market than IndyMac. In 2006, IndyMac ranked number one in the nation among Alt-A lenders, producing $70 billion in volume, or 17.5% of the Alt-A market.[20] Nearly four-fifths of IndyMac's mortgage volume during that span involved Alt-A loans.[21]

[18] IndyMac Bancorp, Form 8K report to Securities and Exchange Commission, May 12, 2008.
[19] IndyMac Bancorp, Inc., 10K Report to Securities and Exchange Commission 2007, Feb. 29, 2008.
[20] 2007 Mortgage Market Statistical Annual – Volume I," Inside Mortgage Finance.
[21] According to Inside Mortgage Finance, Countrywide was close behind in Alt-A volume, at $68 billion, but that figure represented a much smaller slice -- 15% -- of Countrywide's mortgage production.

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Over the past year, much attention has been focused on subprime loans, with references to catch phrases such as "subprime meltdown." Alt-A lenders struggled to distance themselves from subprime. In early 2007, Perry argued that Alt-A lenders were being unfairly lumped in with subprime.[22]

But many of the practices prevalent in the subprime market – including bait-and-switch salesmanship and slapdash underwriting – also appear to have been common in the Alt-A sector. Rising defaults have shown that the Alt-A business wasn't as immune from problems as its proponents argued. As of February 2008, roughly one in seven Alt-A loans nationwide on owner-occupied homes were at least 30 days late, in foreclosure, or already in repossession, according to the Federal Reserve Bank of New York.[23]

Taxpayers at risk?

IndyMac is also worthy of note because it didn't rely as heavily on Wall Street financing as many of the lenders that got into trouble. IndyMac did sell the vast majority of its loans to Wall Street so they could be packaged into mortgage-backed securities investment deals. However, it depended less than many lenders on up-front lines of credit from Wall Street to bankroll its loans before they were sold to investors.

Instead, IndyMac has increasingly relied on federally-insured customer deposits and borrowings from the Federal Home Loan Bank (FHLB) system:

- Its deposits jumped from $4.4 billion at the end of 2003 to $18.9 billion as of March 31, 2008.
- Its FHLB borrowings grew from $4.9 billion at the end of 2003 to $10.4 billion as of March 31, 2008.
- Together, those two sources of funding represented roughly 94% of its total liabilities on March 31, 2008, up from 79% in March 2007.[24]

Initially, IndyMac's use of federally-guaranteed sources of funds made the company less vulnerable to the credit crunch than many other lenders, which went under when Wall Street firms cut-off their lines of credit. However, IndyMac's reliance on capital from the Federal Home Loan Bank system, and on deposits that are backed by the FDIC, puts the federal government in the position of bankrolling loans that may be abusive. It also puts the system at risk of significant losses as loans go bad.

U.S. Senator Charles Schumer has told federal regulators that he's "concerned that IndyMac's financial deterioration poses significant risks to both taxpayers and borrowers and that the

[22] Herb Greenberg, "IndyMac's Optimism Will Be Put to Test," Wall Street Journal, August 18, 2007.
[23] Federal Reserve Bank of New York, "Nonprime Mortgage Conditions in the United States," January 2008.
[24] IndyMac Bancorp, Inc., Form 10Q Report to Securities and Exchange Commission, May 12, 2008.

regulatory community may not be prepared to take measures that would help prevent the collapse of IndyMac or minimize the damage should such a failure occur."[25]

EMPLOYEES: Working for IndyMac

Audrey Streater worked in the mortgage business for three decades. She can remember a time – perhaps a decade ago – when mortgage underwriters "reigned in fear." When an underwriter gave thumbs up or thumbs down to a loan, it meant something.[26]

"Underwriter was spelled G-O-D, and our expertise and our knowledge was taken seriously," Streater recalls wistfully.

Things changed. In recent years, she says, underwriting became window dressing -- a procedural annoyance that was tolerated because loans needed an underwriter's stamp of approval if they were going to be sold to investors.

That was prevailing attitude at IndyMac during the mortgage boom, but also at other lenders too, she and several other former IndyMac underwriters say. A big problem, they say, were "stated income" loans that required no documentation of the borrowers' wages. They say these loans allowed outside mortgage brokers and in-house sales staffers to inflate applicants' incomes and make them look like better credit risks.

Even loans that IndyMac billed as "full-documentation" deals may not have been all that IndyMac presented them to be, according to one lawsuit.[27] The suit says some of IndyMac's "full doc" loans were supported not by W-2s or pay stubs but by a verification of employment form -- paperwork that confirms a borrower has a job but doesn't authenticate his or her income. The suit quotes a February 2006 IndyMac document that says, in bold letters, "**IndyMac NonPrime will accept a Verification of Employment for a full documentation loan with no pay stubs or W2s needed!**"

When underwriters tried to block questionable loans, several ex-employees say, brokers and salespeople went over their heads to management to overturn loan denials. Upper management at the company's Pasadena headquarters "probably got more involved than they should be," Streater says.

"It was the nature of the beast that Pasadena created," she adds. "The broker was always right. If the broker decided to fight it, chances were more than not that he would win."

"A wonderful company"

In all, CRL interviewed 14 former IndyMac employees.

Three said they didn't notice undue pressure to close loans during their time at the company. "It was a wonderful company to work for. There was never any pressure to push loans through," says

[25] James R. Hagerty, "Schumer Asks Regulators For Greater IndyMac Scrutiny," Wall Street Journal, June 26, 2008.
[26] Audrey Streater, telephone interview with Center for Responsible Lending.
[27] Tripp v. IndyMac.

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Maisha Smith, a loan conditions specialist for IndyMac in California in 2004 and 2005. She says the company had strong fraud controls designed to catch bad loans.

Eleven others told CRL that the company funded loans without enough regard for borrowers' ability to repay. In addition, eight more ex-employees are quoted in the California lawsuit describing internal pressures to approve dicey loans.[28] All of them are identified as unnamed "confidential informants." Included among them are two former vice presidents and a former senior auditor, the suit says.

In court papers, IndyMac dismisses the eight former workers as mostly lower-level, short-term employees who had no knowledge of top managers' thinking.[29] Rather than identifying fraud, the company says, these former employees simply "disagree with the policies they believe IndyMac undertook" to pursue a share of the rising mortgage market.

Almost all of the ex-employees interviewed by CRL were underwriters who worked at the company amid the nationwide mortgage surge. Streater came to IndyMac's Marlton, N.J., location as an underwriter in 2005, then worked as a team lead underwriter from 2006 until she left in mid-2007, supervising eight other underwriters.

IndyMac's underwriters were loyal and proud, Streater says, but many got worn down by the pressure to book loans. Many were stymied, afraid to make decisions because "somebody is going to yell at you," she says. Some "were making decisions based on: 'I might as well do this because it's going to get approved anyway.' "

Tamara Archuletta, who was an underwriter for IndyMac in Arizona in 2006 and 2007, recalls one inexperienced underwriter who declared: "It's not my money. I don't care."[30]

"Slap in the face"

Wesley E. Miller, who worked as an underwriter for IndyMac in California from 2005 to 2007, says that when he rejected a loan, sales managers screamed at him and then went up the line to a senior vice president and got it okayed.[31] "There's a lot of pressure when you're doing a deal and you know it's wrong from the get-go – that the guy can't afford it," Miller told CRL. "And then they pressure you to approve it."

The refrain from managers, Miller recalls, was simple: "Find a way to make this work."

Scott Montilla, who worked as an underwriter for IndyMac in Arizona around the same time as Achuletta, says that when salespeople went over his head to complain about loan denials, higher-ups overruled his decisions roughly half the time.[32]

[28] Tripp v. IndyMac.
[29] Tripp v. IndyMac.
[30] Tamara Archuletta, telephone interview with Center for Responsible Lending.
[31] Wesley E. Miller, telephone interview with the Center for Responsible Lending.
[32] Scott Montilla, telephone interview with Center for Responsible Lending.

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"I would tell them: 'If you want to approve this, let another underwriter do it, I won't touch it – I'm not putting my name on it,' " Montilla says. "There were some loans that were just blatantly overstated. . . . Some of these loans are very questionable. They're not going to perform."

In some instances, he adds, he was forced to approve loans that later went into default – and as a result he had points subtracted from his performance score for bad deals he'd tried to block.

"There were very good underwriters in that company," Streater, the New Jersey underwriter, says. "They just ran roughshod over them. . . . To turn around and hold them responsible for those delinquencies is the ultimate slap in the face."

BORROWERS: In IndyMac's debt

Willie Lee Howard grew up as one of 14 children in a sharecropping family near the rural crossroads of Snow Hill, N.C. He attended school sporadically until the end of seventh grade, when his father pulled him out so he could work in the fields. As a young man in the 1960s, he migrated north to Washington, D.C., where he picked up work as a construction laborer. He's put off retirement and, at age 65, continues to work construction, making $15.89 an hour. He tries to put in as much overtime as he can.

In the spring of 2000, he used a government-subsidized loan to buy a small two-bedroom, one-bath house in Northeast Washington. Eight years later, he's battling to save his home in court. He was the victim of a series of predatory mortgage refinances made by four name-brand lenders that "took advantage of his illiteracy and lack of sophistication in financial matters," according to a lawsuit filed for him by the AARP Foundation, CRL, and private attorneys.[33]

IndyMac is one of the lenders.

Howard agreed to the IndyMac loan after getting a telephone solicitation from a mortgage broker working on IndyMac's behalf. Mr. Howard made it clear to the mortgage broker that he could not read or write, but his loan application erroneously claimed he had had 16 years of education.

As part of the deal, IndyMac paid the mortgage broker a $3,895 "yield spread premium" – industry jargon for an incentive payment that rewards the broker for putting borrowers into loans with a higher rates or fees than they qualify for. The December 2005 loan had an initial teaser rate of 1.25% that evaporated after less than two months and rose to 6.58%, and could climb as high as 9.95% over the life of the loan.

Because it was a so-called Payment Option ARM, he was given a choice of four different payments. The lowest was the $621.03 he was quoted at closing. That was barely half of the amount need to cover the monthly interest on the loan, meaning that the rest of the interest was tacked onto the loan and the amount he owed would keep going up rather than going down. The loan included a prepayment penalty, which forced Mr. Howard to pay thousands of dollars to get out of his IndyMac loan when he refinanced with another lender a few months later.

[33] Personal details and allegations are from Howard v. Countrywide Home Loans Inc. et al, U.S. District Court for the District of Columbia, March 25, 2008. Along with IndyMac and Countrywide, other lenders named as defendants include Washington Mutual Bank and WMC Mortgage Corporation.

The lawsuit alleges IndyMac violated federal and D.C. law by failing to properly disclose the loan's terms and putting him into a loan he was unable to repay. In court papers, IndyMac denies Mr. Howard's claims and suggests he has "unclean hands" in the matter.

Bait and switch

Mr. Howard's allegations echo those in other legal claims against IndyMac. Lawsuits accuse IndyMac of working with independent mortgage brokers to land borrowers into predatory loans. Several of the lawsuits claim that borrowers were bamboozled by brokers who promised low, low rates that would last a year or even five years. Instead, the lawsuits say, the teaser rate evaporated within one or two months.

A lawsuit in federal court in New York says the complexity of IndyMac's Payment Option ARM – along with its low teaser rates and low initial payments -- make it "an ideal product to mislead borrowers" with promises of "low interest rates" and "low payments."[34]

Another lawsuit claims Perry and other IndyMac executives "knew or should have known" that numerous mortgage brokers were duping borrowers and pushing them into IndyMac Option ARMs that weren't suitable for them.[35] In its "zeal to close loans at all costs," the lawsuit says, management created procedures that "placed speed, efficiency and profitability above making reasonably sure that their borrowers were not being defrauded into taking out these Option ARM loans."

In federal court in Pennsylvania, William and Emma Hartman claim a mortgage broker manipulated them into taking out an IndyMac loan by falsely promising their interest rate and monthly payments would *decrease* in a year or less.[36] Other complaints alleging bait-and-switch tactics by IndyMac and its brokers have been filed in Virginia[37], Colorado[38], Maine[39], Missouri[40] and California.[41]

[34] Ferguson v. IndyMac Bank, U.S. District Court for the Eastern District of New York, filed February 14, 2008.

[35] Zurawski v. Mortgage Funding Corp. et al, U.S. District Court for the District of New Jersey February 13, 2008.

[36] Hartman v. Deutsche Bank National Trust Co. et al, U.S. District Court for the Eastern District of Pennsylvania, December 24, 2007.

[37] Mitchell v. IndyMac Bank, U.S. District Court for the Eastern District of Virginia, February 19, 2008. Andre and Christine Mitchell claim they were misled about the costs of the loan and weren't given the legally required disclosures laying out the loan terms.

[38] Brannan v. IndyMac Bank, U.S. District Court for the District of Colorado, June 15, 2006. Donna and Donald Brannan claim they specified they didn't want a loan with "negative amortization," in which the loan balance keeps growing because the payments don't fully cover the interest. Instead, the suit says, the broker stuck them in "the exact loan they were trying to avoid." In court papers, IndyMac said any losses the Brannans may have suffered "were the result of the conduct of third parties over whom IndyMac had no control." The case was settled on undisclosed terms in 2007.

[39] Darling v. IndyMac Bancorp, U.S. District Court for the District of Maine, October 3, 2006. Joseph and Roxanne Darling allege a mortgage broker dangled the lure of a 1% IndyMac loan and, in the face of their doubts, "continued to assure them that the loan was truly a one-percent loan and was not 'too good to be true.' " The Darlings claim they were given confusing and contradictory loan disclosures and that their monthly payment wasn't what they'd been promised. IndyMac said in court papers that any mistakes in the

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IndyMac denies the allegations in these lawsuits. It maintains that it goes to great lengths to make sure borrowers know what they're getting. IndyMac Bancorp president Richard Wohl told financial analysts in 2006: "We have really good disclosures for our consumers, very plain English disclosures."[42]

One of the biggest legal attacks on the company has come in federal court in New Jersey, where more than 20 lawsuits are targeting IndyMac and the independent brokers that sniffed out loans for the company. According to one lawsuit, this group of brokers included one, Morgan Funding Corp., that employed a salesman who had been convicted in 2002 in a $500,000 insurance fraud involving staged auto accidents.[43] Another Morgan salesman had been barred from trading securities by the National Association of Securities Dealers, the suit says.

The suit claims IndyMac knew brokers were using slippery sales pitches to sell IndyMac loans, because the company had received repeated complaints about the brokers' tactics.[44] In the case of Morgan Funding, IndyMac not only had received complaints that the broker had lied to borrowers; it also had two employees working inside the broker's offices from 2004 to 2007, the suit says.[45] These IndyMac employees provided training to the mortgage brokers that "aided and abetted" Morgan Funding in deceiving borrowers, the suit claims.

Teaneck, N.J. residents Collin and Dorothy Thomas say their broker, DCI Mortgage Bankers LLC, promised them an IndyMac loan with a 1% rate for the first five years. What they got was "vastly different" – the 1% rate expired a month and a day later.[46] The paperwork, which said their rate "may" change at that time, was disingenuous – because IndyMac and the broker *knew* the rate was going to increase after a month, the Thomases claim.

Another New Jersey borrower, Arnette Garnes, says a broker promised her a 2.85% rate on an IndyMac loan for five years, but the real rate turned out to be 7.71%. When she complained she hadn't gotten what she'd been promised, she says, a salesman at the broker told her: "Well, Arnette, you should have read the fine print."[47]

disclosures were good-faith errors that didn't violate the law. IndyMac paid $20,000 in late 2007 to settle its dispute with the Darlings.

[40] Harris v. Vinson Mortgage Services, U.S. District Court for the Eastern District of Missouri – Eastern Division, March 6, 2008. Pat Harris, a disabled Navy veteran, alleges a broker misled him about the size of his monthly payments. IndyMac denies the allegations and says Mr. Harris or "third parties" are to blame for any problems with the loan. SEE Appendix 2.

[41] George v. IndyMac Bank, U.S. District Court for the Central District of California, filed April 25, 2008. Attorneys for Methalee George, an 82-year-old widow, claim she was a victim of elder abuse and fraud at the hands of IndyMac. The suit alleges that the Option ARM sold to Ms. George was a "deceptively devised product."

[42] Voxant FD (Fair Disclosure) Wire, "Q3 2006 IndyMac Bancorp, Inc. Conference Call," November 2, 2006.

[43] Zurawski v. Morgan Funding.

[44] Zurawski v. Morgan Funding.

[45] Zurawski v. Morgan Funding.

[46] Thomas v. DCI Mortgage Bankers, U.S. District Court for the District of New Jersey, September 28, 2007.

[47] Glover v. Equity Source.

In court papers, IndyMac and the brokers deny wrongdoing. In response to one of the lawsuits, for example, IndyMac asserts the loan terms were properly disclosed and that borrowers may have "failed to read the documents provided to them."[48]

Racial discrimination

Some borrowers claim IndyMac has made a habit of targeting minority customers for overpriced loans. A lawsuit seeking class action status in federal court in Illinois[49] alleges IndyMac targets black and Latino borrowers for higher rates than whites. It notes that IndyMac's own data shows that in 2004 to 2006, minorities borrowing from the company were more than 50% more likely to receive a high interest rate loan than whites.

The lawsuit claims IndyMac has channeled minority borrowers "into mortgage loans with less favorable conditions than those given to similarly situated non-minority borrowers." According to the suit, Earlene Calvin, an Apple Valley, California homeowner, was stuck with a long list of excessive fees on a $416,000 IndyMac loan arranged by a mortgage broker. The fees included: a $8,320 loan origination fee to the broker, a $630 "broker processing fee," a $495 "administration fee" to the broker and a $725 "funding fee" to IndyMac.

Inflated appraisals

A lawsuit in federal court in New York[50] claims IndyMac used inflated appraisals to grease the loan process. It alleges IndyMac told outside appraisers the "target value" that they needed to hit to make a loan go through. The company rewarded appraisers who played ball and hit the values with more assignments, but punished those who didn't by cutting their assignments, the lawsuit claims.

One confidential witness in this lawsuit says IndyMac's chief appraiser and other executives were aware of these practices and allowed them to go on. In fact, the witness says, in-house employees who were supposed to make sure property values were accurate were intimidated by higher-ups and told they would be fired if they tried to block fraudulent appraisals.

Falsified paperwork

Another thread that runs through borrowers' legal complaints against IndyMac is the allegation that their loans were pushed through with falsified paperwork.

In California, Methalee George, an 82-year-old widow, claims an IndyMac employee falsified her loan application by listing her income as $3,900 a month. Her real income was $2,103 a month.[51] In Chicago, Thelma and Carter Ware claim they gave a broker accurate documentation of their

[48] Glover v. Equity Source.

[49] Mables v. IndyMac Bank, U.S. District Court for the Northern District of Illinois – Eastern Division, filed April 17, 2008.

[50] Cedeno v. IndyMac, U.S. District Court for the Southern District of New York, August 25, 2006. IndyMac is seeking to have the lawsuit dismissed, arguing that its federal regulator, the Office of Thrift Supervision, has sole authority to address violations by the lender.

[51] George v. IndyMac Bank, U.S. District Court for the Central District of California, filed April 25, 2008.

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income and assets, but the broker inflated the appraised value of their home and falsified their income on an application for two loans from IndyMac.[52] The Wares claim they were rushed through the loan closing and weren't told they were being given two loans – including one that carried a prepayment penalty and another that carried a "balloon payment" that would require them to come up with a large lump sum after 15 years. The broker took "exorbitant" fees totaling $12,760 in exchange for sticking the Wares into two "unnecessarily expensive" IndyMac loans totaling $329,000, their suit says.

Lenders frequently point the finger at borrowers and brokers when information on loan applications turns out to be fictitious. But borrowers aren't the ones who are in control of the process and handling the paperwork. Lenders have a responsibility – to their borrowers and to their shareholders – to thoroughly review loan applications and make sure the information is accurate. Otherwise, borrowers are likely to get in over their heads, stuck with loans they can't afford.

Montilla, the former IndyMac underwriter in Arizona, believes many borrowers had no idea their stated incomes were being inflated as part of the application process: "A lot of times you talked to the customer and the customer said: 'I never told them I made that much.' "

Archuletta, another former Indymac underwriter, agrees that most borrowers were unaware their incomes had been inflated. "Some of the borrowers were savvy and knew they were committing fraud," she says. "But a lot of them really didn't understand the programs. You sit down and there's 100 pages of stuff – nobody reads through all of that. It's our responsibility to let them know what they're getting into."

Scott Vaughan, the attorney for Ben Butler, the Savannah, Ga., retiree who claims his Social Security income was inflated, wrote IndyMac that the income listed in Mr. Butler's application paperwork "was not provided by Mr. Butler and was a complete fabrication by someone 'in the loop' so to speak. The mortgage broker and IndyMac are two of the persons/entities in that loop. . . . There is no amount of income filled in on the original application. Mr. Butler was never asked to state his income. Any prudent underwriter should have questioned the income considering the amount/source and required proof. It can only be surmised that this was the income needed to qualify for the loan."

Vaughan says his client was targeted for fraud and false promises because of his age, race, and limited education.[53] Mr. Butler was told the loan would eventually turn into a reverse mortgage, and was quoted a monthly payment that was less than a third of what it turned out to be, Vaughan says.[54]

[52] Ware v. IndyMac Bank, U.S. District Court for the Northern District of Illinois – Eastern Division, April 10, 2007.
[53] Vaughan letter, and Butler v. John Flucas, Superior Court of Chatham County, State of Georgia, October 24, 2007.
[54] Scott Vaughan, telephone interview with Center for Responsible Lending.

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Blacked out

Another Georgia case provides an example of a loan application full of obvious red flags that were missed or ignored by IndyMac's loan-underwriting system, according to an analysis by Atlanta Legal Aid Society's Home Defense Program, a non-profit legal clinic.[55]

Elouise Manuel, 68, has lived in her home in Decatur, Ga., for half her life.[56] She retired from a career in food service, making salads and working as a line server. She "is not sophisticated in the complex financial matters." In 2004, her only income was $527 a month in Social Security.

She owned her home free and clear when she began looking for a loan to pay off home repairs and other bills. She went to a mortgage broker where a cousin's daughter worked. Ms. Manuel told the broker she could afford a mortgage payment of no more than $120 a month. The broker told her she wouldn't have to pay any more than that, and that it would get her the lowest fixed rate possible.

The loan turned out to be something much different – an adjustable rate mortgage with an initial teaser rate of 3.875% that lasted one month. The rate quickly jumped to 6% and eventually rose to 10.25%.

As her monthly payment climbed to around $200 a month, Manuel called IndyMac and learned she had an adjustable rate loan. She had to get help from her family and apply for food stamps to keep up with her growing expenses.

How did she get in over her head?

Her lawsuit claims IndyMac purposely structured the deal so it was ignorant of her financial means and ignored clear evidence that something was amiss with the information submitted for her application. IndyMac specifically instructed the broker to send copies of her Social Security award letters with the dollar amounts blacked out. In other words, the lender wanted proof that she was receiving Social Security but didn't want to know how much.

Her IndyMac loan file is full of inaccurate and contradictory information. One document indicated she was getting $1,100 a month in retirement income. Another said she was employed and earning $2,100 a month. Another pegged her income at $3,200 a month. Similarly, IndyMac paperwork and computer files show her assets growing from zero to $2,100 to more than $20,000 – all in the matter of 10 days.

Ms. Manuel's lawsuit says she never misstated her income and that given the inconsistencies in the loan file, IndyMac should have known it needed real verification of her income and assets. It also knew from the paperwork, the suit says, that she wanted a fixed rate loan, not an adjustable rate one.

IndyMac told *BusinessWeek* last year that it followed standard procedure on Ms. Manuel's loan and that it relies on the broker and the borrower to provide accurate information.[57] It said the loan

[55] Letter, from Karen E. Brown, staff attorney, Atlanta Legal Aid Society, to Susan E. McGovney, senior vice president and corporate compliance officer, IndyMac Bank, August 8, 2007.
[56] Personal details and legal claims from Brown letter, and Manuel v. American Residential Financing, Inc., et al, Superior Court of Gwinnett County, State of Georgia, April 3, 2008.

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left Ms. Manuel better off, not worse off -- because the monthly payments were less than what she'd been paying on the bills it paid off.

A company spokesman said giving instructions to black out Ms. Manuel's income on her Social Security documents was "an error of judgment." It was the action of an individual employee, the spokesman said, and not company policy.

In its discussions with the Atlanta Legal Aid Society, company officials questioned Ms. Manuel's credibility, in part because a relative worked at the mortgage broker. In reply, the legal clinic said Ms. Manuel never asked anyone to falsify her information, and that records indicate her relative wasn't involved in preparing the file for submission to IndyMac.[58] It said IndyMac's "statements implying Ms. Manuel has engaged in criminal activities" were "preposterous."

MANAGERS: Ignoring red flags

In February, IndyMac CEO Michael Perry put out his annual letter to shareholders.[59] "2007 was a terrible year for our industry, for IndyMac and for you, our owners," he began.

Assessing blame for the nation's mortgage mess, Perry said all home lenders, including IndyMac, "were part of the problem, and, as IndyMac's CEO, I take full responsibility for the mistakes that we made."

Like other innovations – "e.g., the Internet, railroads, etc." – creative home lending "went too far," Perry said, partly because lenders were "too close to it, but mostly because objective evidence of this credit risk did not show up in our delinquencies and financial performance until it was too late."

Even if IndyMac had been "blessed with perfect foresight" and pulled back in 2005 and 2006, Perry said, the company would have still lost money in 2007 because its mortgage operations would still have cratered thanks to "the broader and unforeseeable collapse" of the Wall Street apparatus that pooled mortgages into investment deals.

Early warnings

Not everyone is convinced, though, that IndyMac's bad loans were simply the result of misjudgments made by company leaders as larger market forces swept them toward hidden shoals. In fact, IndyMac dealt with a number of episodes in recent years that should have prompted it to be more careful about the loans it was funding and the brokers it was doing business with.

For example:

[57] Mara Der Hovanesian and Brian Grow, "Mortgage Mayhem," *BusinessWeek*, August 20, 2007.
[58] Brown letter.
[59] Business Wire, "IndyMac Issues 2007 Annual Shareholder Letter," February 12, 2008.

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-- In early 2004, Washington Mutual Mortgage Securities Corp. sued IndyMac for more than $50 million, claiming IndyMac had peddled hundreds of problem loans from 1997 to 2000 to a Washington Mutual subsidiary. The pool of mortgages, the suit said, included loans with underwriting issues and inflated appraisals, and others on which borrowers had quickly defaulted, an indication fraud was involved or borrowers couldn't afford the loan from the start.[60]

IndyMac said it was not at fault. The two companies settled the dispute on undisclosed terms.

-- IndyMac became ensnarled in litigation over its relationship with a real-estate development firm whose owners were convicted of forging documents as part of a scheme to sell overpriced properties in Pennsylvania's Pocono Mountains in the late 1990s and early 2000s.

A lawsuit[61] in federal court alleges IndyMac funded loans arranged by the development firm even though it had been warned the Poconos were a hotbed of mortgage fraud. The suit claims IndyMac failed to do due diligence and "became pivotal to the conspiracy" by bankrolling the deals.

--IndyMac recorded a $9.7 million loss in first half of 2006 due to a fraud scheme that was the result of what Perry described as "massive collusion" between a mortgage broker and a developer in Michigan and Florida. [62]

CEO Perry admitted his company had "gotten a little bit laxed." "We didn't have the focus on fraud that we should have in this area," he said.

--IndyMac waited years in some cases before clamping down on mortgage brokers that had fed the company bad loans.

In 2007, for instance, IndyMac sued a Nevada-based broker, Silver State Mortgage, after 35 out of 36 borrowers in one pool of loans failed to make their first payment.[63] Many of the loans were made as early as 2005 and IndyMac waited at least a year to demand the broker repurchase the earliest ones – and continued taking on loans from Silver State even after dicey nature of Silver State-sponsored mortgages became apparent, attorneys in a California lawsuit have alleged.[64]

In another example, IndyMac asserts that 16 out 18 borrowers in a pool of loans brokered by Geneva Mortgage Corp. failed to make early payments.[65] Two of the bad loans dated back to 2003 and most of the rest were made in 2005.[66] However, IndyMac continued funding loans brought in by Geneva in 2006 and didn't file suit over the issue until 2007.[67]

[60] Washington Mutual Mortgage Securities Corp. v. IndyMac Bancorp, Los Angeles Superior Court, February 3, 2004.

[61] Gaines v. Parisi, U.S. District Court for the Middle District of Pennsylvania, January 11, 2006.

[62] Voxant FD (Fair Disclosure) Wire, "Q2 2006 IndyMac Bancopr. Inc. Earnings Conference Call," July 27, 2006.

[63] IndyMac Bank v. Silver State Mortgage, U.S. District Court for the District of Nevada, March 29, 2007. IndyMac's suit against Silver State was dismissed April 1, 2008, at IndyMac's request.

[64] Tripp v. IndyMac.

[65] IndyMac Bank v. Geneva Mortgage Corp., U.S. District Court for the Central District of California, March 22, 2007.

[66] Tripp v. IndyMac.

[67] Tripp v. IndyMac.

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Full speed ahead

Even as IndyMac was taking a less-than-aggressive approach to policing its brokers, the company was coming under growing pressure from Wall Street investors who were pushing back bad loans that IndyMac had sold into investment deals. These "kickbacks" swelled from $108 million in 2005 to $194 million in 2006 and $613 million in 2007 alone.[68] IndyMac tried to hide these loans by launching a special project on weekends in 2006, directing underwriters to aggressively "rework" loan files on kicked-back mortgages so they could be resold again to other investors, according to two witnesses in the California lawsuit.[68]

Amid these problems – and rising concerns industry-wide about the cooling housing market – IndyMac forged ahead. Instead of pulling back, IndyMac made it clear that its plan was to take advantage of other lenders' problems to take a bigger slice of mortgage market.

In June 2006, IndyMac predicted the housing slump was halfway over and was touting plans to open regional centers in Philadelphia, Chicago and other cities and reach for growth in Pay Option and interest-only adjustable rate mortgages.[69] "If you want to grow in a shrinking market, by definition you have to take market share," IndyMac president Richard Wohl said.

Three months later, Perry said that "certainly there are negative signs in our industry," but IndyMac's model made it "more optimistic than the industry overall."[70]

IndyMac's determination to keep growing as others fell to the wayside or pulled back showed in its 2006 mortgage production. The lender boosted its lending volume by some 50% in 2006, during a year when overall industry volume was slightly down.

In March 2007, as the severity of the U.S. mortgage crisis was becoming more clear, Perry issued a statement designed to calm fears about his company's vulnerability: "Based on an objective analysis of the facts, talk of the 'subprime contagion' spreading to the Alt-A sector of the mortgage market is, in our view, overblown."[71]

He said "IndyMac's credit quality shines in relation to the industry, validating our lending standards and practices."

In August 2007, with world financial markets flailing, IndyMac announced it was planning to hire as many as 850 former employees from its bankrupt rival, American Home Mortgage Investment Corp.[72]

[68] IndyMac Bancorp, Inc., 10K Report to Securities and Exchange Commission 2007, Feb. 29, 2008.
[68] Tripp v. IndyMac.
[69] Reuters, "Housing slowdown halfway through, IndyMac says," June 19, 2006.
[70] Voxant FD (Fair Disclosure) Wire, "IndyMac Bancorp., Inc. at Lehman Brothers 4th Annual Conference,'. September 13, 2006.
[71] Business Wire, "IndyMac Provides Additional Credit Loss Analysis on Alt-A and Subprime Lending," March 29, 2007.
[72] Jonathan Stempel, "IndyMac to hire up to 850 ex-American Home workers," Reuters, August 28, 2007.

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By 2008, though, it had become apparent IndyMac had overreached, making large numbers of bad loans and failing to pull back quickly enough as the mortgage industry crashed.

In January, the company announced plans to slash its workforce by 24%, laying off 2,400 employees.

On May 12, the company announced a $184 million loss for the first quarter of the year. It called the results hopeful, because they were an improvement over the heavy losses it suffered in 2007.

"I am confident IndyMac will be a survivor," Perry said. ". . . IndyMac is the last remaining major independent home lender, and we will be a better company and stronger competitor for having survived the current crisis period, which should position us well to take advantage of the opportunities that will surely return."[73]

CONCLUSION

Federal regulators have pointed out that many of the lenders accused of bad practices, such as Ameriquest, were under state rather than federal supervision. However, IndyMac's record, as well as Countrywide's, raises questions about whether federal regulators turned a blind eye to improper practices among the lenders they licensed.

Amid the overheated atmosphere of the mortgage boom, IndyMac and lenders of many different stripes appear to have abandoned sound decision-making and sustainable growth strategies. Instead, they chose to take unreasonable risks and reach for spectacular levels of growth that produced short-term profits but ended in pain for borrowers, shareholders, and communities.

It didn't have to happen this way. Federal authorities – including the Office of Thrift Supervision – should have kept a closer eye on IndyMac's business model and practices. They had leverage over IndyMac, given that the company operated as a federally-chartered thrift supported by deposit insurance and borrowings from the FHLB system.

IndyMac's story suggests that, in the absence of rigorous oversight, there's little to stop lenders from getting swept up by market frenzies and embracing reckless practices. This should be uppermost in policymakers' and citizens' minds as federal and state governments work to clean up the mortgage mess – and to design rules that will prevent such disasters from happening again.

[73] Business Wire, "IndyMac Bancorp Reports First Quarter Loss of $184.2 million," May 12, 2008.

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APPENDIX 1

“Patently unsuitable”

Simeon Ferguson was born in Jamaica in 1921. He moved to the United States in the mid-1960s. A few years ago, his behavior began to change. He began asking the same question over and over. He visited a dying daughter in Jamaica, but then forgot he’d visited her. He was suffering from dementia.[74]

By 2006, Mr. Ferguson had been living in his house in Brooklyn for more than three decades. He was 85 years old, living on a fixed income of $1,126 a month, and had a $360,000 mortgage with a fixed interest rate of 5.95%.

According to a lawsuit filed in federal court in New York, a telemarketer solicited Mr. Ferguson to refinance his mortgage. He told a neighbor that he was getting a 1% interest rate.

The loan had an initial teaser rate of 1.25%, but jumped to 7.138% after six weeks. His initial minimum payment was $1,482 a month, already more than his monthly retirement income. In early 2007, the gap grew even larger, with his minimum monthly payment jumping to $1,903.

It was a loan that was “patently unsuitable” for Mr. Ferguson and “virtually certain to result in foreclosure,” the suit alleges.

According to the lawsuit, the loan was made under an IndyMac “stated income” loan program for retirees, which makes no effort to document borrowers income or determine whether they can afford the deal. A hallmark of the program, the suit says, was that IndyMac refused to take loan applications that made any mention of the borrowers’ income, “thereby encouraging mortgage brokers to extend unaffordable loans while attempting to duck accountability by deliberately remaining ignorant of the borrower’s ability to pay the mortgage.” In fact, the lawsuit notes, IndyMac specifies that “the file must not contain any documents that reference income or assets.”

In the end, the suit claims, the loan was a scheme targeted at retirees on fixed income, designed to make loans that strip equity from the borrowers homes and fatten IndyMac’s bottom line.

It wasn’t until Mr. Ferguson went into the hospital with a bone infection in May 2006 that one of his daughters took over his financial affairs and discovered the loan. When she asked him why he’d taken out an adjustable rate loan, he insisted he’d gotten a low-interest fixed rate one.

“It’s not that my father went out to buy a home he couldn’t afford, that’s not what happened here,” the daughter, Karlene Grant, said. “Somebody solicited him and made him think he was getting a better deal. Then they made some money and ran.”[75]

[74] Personal details and allegations are from Ferguson v. IndyMac Bank, U.S. District Court for the Eastern District of New York, filed Feb. 14, 2008.

[75] “Joseph Huff-Hannon, “Facing Foreclosure: Brooklyn Retiree On Verge Of Losing Home As Subprime Lenders Target Cash-Poor Seniors,” The Indypendent, April 25-May 15, 2008.

The broker that arranged the deal initially maintained that Mr. Ferguson had had a lawyer with him at closing. In response to a complaint to New York banking authorities, the broker said Mr. Ferguson had been "involved, consulted, and took part through the whole loan process in an intelligent fashion."[76] Mr. Ferguson's lawsuit says no lawyer was present and "given that Mr. Ferguson was suffering from acute dementia at the time of the transaction, it's unlikely he was engaged and involved in the process."

IndyMac directed more than $21,000 in fees to the broker for arranging the transaction – apparently including, the lawsuit says, a large sum that rewarded the broker for "inducing Mr. Ferguson to take out a loan on terms much less favorable than were otherwise available to him."

[76] Ferguson v. IndyMac.

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Appendix 2

A veteran's story

In late 2006 Pat Harris, a disabled Navy veteran in St. Louis, wanted to catch up on back taxes and other debts.

A mortgage broker promised Mr. Harris he could refinance his mortgage and pay off his credit card and tax bills with a loan that would carry a $526-a-month payment.[77]

Mr. Harris claims the mortgage professionals involved in the deal exaggerated his income, falsely listing it as $2,500 a month, or nearly three times his VA pension of $910 a month.

Instead of $526 a month, Mr. Harris' payment turned out to be $631 a month, nearly 70% of his income.

In addition to rolling over his original mortgage, the new loan provided $3,261 in new money to cover his credit card and tax debts. The settlement charges on the loan, meanwhile, totaled $5,962 – nearly twice the amount of new money provided by the loan.

Now Mr. Harris is suing, claiming IndyMac and the broker took advantage, overcharging him and flipping from his old mortgage, which had an interest rate of 5.99%, into a new one with an adjustable rate, which started at 10.5% and could go as high as 16.5%.

"The loan from IndyMac has not benefited the plaintiff," the suit says. "Instead, it has left him deeper in debt and with a mortgage payment that he cannot afford."

In court papers, IndyMac denies the allegations and suggests that any problems with the loan were caused by Mr. Harris or by "third parties."

[77] All details and allegations from Harris v. Vinson Mortgage Services, U.S. District Court for the Eastern District of Missouri – Eastern Division, March 6, 2008.

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